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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Thursday, September 22, 2005
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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Friday, September 16, 2005

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 97

[Doc. No. ST–05–02]

RIN 0581–AC42

Plant Variety Protection Office, Fee Increase

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is increasing Plant Variety Protection (PVP) Office application, search, and certificate issuance fees by 20 percent. The last general fee increase in February 2003 is no longer adequate to cover current program obligations for administrative and information technology needs. The PVP Act of 1970 requires that reasonable fees be collected from applicants seeking certificates of protection in order to maintain the program. Also, a technical amendment will allow applicants to send voucher seed samples directly to the public repository.

EFFECTIVE DATE: October 17, 2005.

FOR FURTHER INFORMATION CONTACT: Janice M. Strachan, USDA, AMS, Science and Technology (S&T), PVP Office, NAL Building, Room 401, 10301 Baltimore Avenue, Beltsville, MD 20705–2351, telephone 301–504–5518, fax 301–504–5291, and e-mail *Janice.Strachan@usda.gov*.

SUPPLEMENTARY INFORMATION:

I. Executive Order 12866

This final rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore, was not reviewed by the Office of Management and Budget (OMB).

II. Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small business entities. There are more than 800 users of the plant variety protection service, of whom about 100 may file applications in a given year. Some of these users are small business entities under the criteria established by the Small Business Administration (13 CFR 121.201). AMS has determined that this action would not have a significant economic impact on a substantial number of these small business entities.

The PVP Office administers the PVP Act of 1970, as amended (7 U.S.C. 2321 *et seq.*), and issues Certificates of Protection that provide intellectual property rights to developers of new varieties of plants. A Certificate of Protection is awarded to an owner of a variety after examination indicates that it is new, distinct from other varieties, genetically uniform, and stable through successive generations. This action raises the fees charged to users of plant variety protection. AMS estimates that the rule will yield an additional $277,200 during fiscal year (FY) 2006. The cost to private and public business entities will be proportional to their use of the service, and shared equitably. The cost to individual users will increase by $816 per PVP Certificate issued or by 20 percent per application. PVP is a voluntary service.

AMS regularly reviews its user fee financed programs to determine if fees are adequate. The most recent review determined that the existing fee schedule will not generate sufficient revenue to cover the program's operating costs, depleting the trust fund reserve balance. From 1995 through 2005, federal salaries have increased 43 percent and inflation has increased the cost of supplies and services by 25 percent. The net effect on the PVP Office is an increase in overall expenses of 41 percent since 1995, offset by fee increases of 10 percent in September 2000 and 35 percent in February 2003. The income of the PVP Office is dependent mainly on the number of new applications filed, which fluctuated between 277 and 354 applications since FY 2000, while typical operating expenses remain fixed. During this period, additional funding was needed for continued technological improvements and office relocation. In FY 2001 through FY 2004, expenses have exceeded income each year, despite earlier fee increases. Program operations were maintained by using the trust fund reserves, thus reducing those reserves. The PVP Office needs to adjust fees to provide adequate revenue for current program operations and to rebuild an adequate trust fund reserve. Without a fee increase, FY 2006 revenues are projected at $1,496,000; costs are projected at $1,614,720 for a loss of $118,720. The trust fund reserve would be inadequate to satisfy Agency policy and prudent financial management by the end of fiscal year 2007.

AMS calculated the new fee schedule by projecting FY 2007 revenues of $1,496,000 and program obligations of $1,705,662. This indicates a projected loss to the program of $209,662 for FY 2007. Without a fee increase, the reserve balance at the end of FY 2007 is projected to drop to $756,796, which corresponds to 5 months of operating funds in the reserve balance. With a fee increase of 20 percent, FY 2007 revenues are projected to be $1,773,200 and the trust fund reserve balance is expected to be $1,867,018, which corresponds to 13 months of operating funds in the reserve balance. This level of trust fund maintenance satisfies Agency requirements.

The final action also amends regulations related to the voucher seed sample. The voucher seed sample is a supplement to the Exhibit C description of the variety and is kept for the life of the certificate. Currently, seed samples are submitted to the PVP Office, which then ships the seed samples to the public repository at USDA's Agricultural Research Service (ARS) facility in Ft. Collins, CO. The amendment permits voucher seed samples to be submitted directly to the public repository. A small seed sample (15–25 seeds), which may be needed for the examination of crops which have distinctive seed characteristics, may be required for some crops at the discretion of the examiner. Periodically, the germination rate of the voucher seed sample is tested to verify that it remains a viable sample for long-term storage. These tests use up the stored seed sample. A larger initial seed sample is

needed to ensure that germination testing does not deplete the stored sample.

A new section is added to give stakeholders guidance in how, when, and where to make the seed deposit. Because the PVP Office was handling the seed deposit, these regulations were deemed unnecessary in the past. Now that applicants will be depositing seeds themselves, they need additional guidance in how to package the seeds, where to send them, and when to deposit them in relation to the filing of a PVP applicant. This new section is based on similar regulatory language present in the U.S. Patent and Trademark Regulations (54 FR 34880, August 22, 1989, effective January 1, 1990). The patent-related text has been adapted to fit the specific circumstances of the PVP Office.

III. Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect, nor will it preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposed rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of the rule.

IV. Paperwork Reduction Act

This rule does not contain any information collection or record keeping requirements that are subject to the Office of Management and Budget approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Background Information

The PVP Program is a voluntary, user fee-funded service, conducted under the Authority of the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*). The Act authorizes the Secretary of Agriculture to provide intellectual property rights that facilitate marketing of new varieties of seed-propagated crops and tubers. The Act also requires that reasonable fees be collected from the users of the services to cover the costs of maintaining the program.

In January 2003, AMS published a rule in the **Federal Register** (60 FR 17188) that increased Plant Variety Protection Office fees and that became effective February 2003.

In February 2004, the AMS Budget Office performed a fee analysis that indicated the need to increase the program fee schedule in order to recover the administrative and information technology costs and maintain an adequate program reserve balance. For FY 2006, user fee revenues and program obligations are projected to be $1,496,000 and $1,614,720, respectively, resulting in an estimated $118,720 program deficit. AMS estimates that this final rule will yield an additional $227,100 during FY 2006 that will offset increased program operating costs. With a fee increase, FY 2007 revenues and expenditures are projected to be $1,773,200 and $1,705,662, respectively.

AMS used the fees currently charged as a base for calculating the new fee schedule for FY 2006. The fees set forth in Sec. 97.175 as of February 2003 are increased. The supplemental fees that were established in May 2005 will not be increased, including the $250.00 portion of the allowance and issuance fee that was implemented to recover the costs of improving the PVP program's electronic archiving capabilities. The application fee is increased from $432 to $518, the search fee from $3,220 to $3,864, and the original issuance fee from $432 to $518. The fees for reviving an abandoned application, correcting or re-issuance of a certificate are increased from $432 to $518. The charge for granting an extension for responding to a request is increased from $74 to $89. The hourly charge for any other service not specified is increased from $89 to $107. The fee for appeal to the Secretary (refundable if appeal overturns the Commissioner's decision) is increased from $4,118 to $4,942. Reproduction of records, drawings, certificates, exhibits or printed materials, late payment, and late replenishment of seeds is increased by 20 percent. These fee increases are necessary to recover the costs of this fee-funded program.

At the March 2003 annual meeting, the Plant Variety Protection Advisory Board was informed of the anticipated FY 2005 cost increases for maintaining program operations and administration. We also consulted with the Board regarding potential increases to the basic fee schedule for FY 2006. They recommended that fees be increased. This rule makes the minimum changes in the regulations to implement the recommended increased fees to maintain the program as a fee-funded program.

The Plant Variety Protection Board recommended that internal processes related to the handling of seed samples be streamlined. Section 97.6(d) was recently amended to provide that cell cultures for tuber-reproduced varieties need not be deposited until after the examination has been completed, rather than at the time the application is filed. A similar change was made for the establishment of plots of vegetative material for self-incompatible parents of hybrids. The requirement that 2,500 seeds of the basic variety must be submitted will the application was modified to allow waivers of this requirement. This final rule will further simplify this process by applying the same requirements to seeds and allowing the applicant to submit a declaration that the seed sample will be deposited, rather than requiring that the sample be submitted with the application. This will increase efficiencies in the PVP Office by removing the necessity for the Office to routinely handle the samples and forward them to the ARS National Center for Genetic Resources Preservation (NCGRP) facility in Ft. Collins, Colorado. The NCGRP is the only public depository approved by the Commissioner at the present time.

We also require that a larger initial seed sample be deposited to ensure that germination testing does not deplete the stored sample. We have added of Section 97.7, which provides guidance to applicants in how, when, and where to deposit their voucher seed samples.

Summary of Public Comment

A notice of the proposed rule was published in the **Federal Register** (70 FR 40921) on July 15, 2005. A 30-day comment period was provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impact of this action on organizations considered to be small businesses. The comment period expired on August 15, 2005, and two comments were received on the proposed rule.

One comment stated that a fee increase would be accepted if stakeholders could feel that the PVP Office conducts its business in a prompt and orderly fashion. Another comment indicated that the fee increase was insufficient to cover the full costs relating to what the commenter believed was a negative impact on the United States with regard to plants and seeds that are introduced into this country. As previously stated, the PVP Act of 1970 requires that reasonable fees be collected from applicants seeking certificates of protection in order to maintain the program. This fee increase will adjust fees to provide adequate revenue for current program operations and to rebuild an adequate trust fund reserve. With regard to the PVP Office conducting its business in a prompt and orderly fashion, the Office continues to improve the quality of its services. Accordingly, no change to the rule will be made as a result of the comments.

List of Subjects in 7 CFR Part 97

Plants, seeds.

■ For reasons set forth in the preamble, 7 CFR part 97 is amended as follows.

PART 97—PLANT VARIETY AND PROTECTION

■ 1. The authority citation for part 97 continues to read as follows:

Authority: Plant Variety Protection Act, as amended, 7 U.S.C. 2321 *et seq.*

■ 2. Section 97.6(d)(1) is revised to read as follows:

§ 97. 6 Application for certificate.

* * * * *

(d) * * *

(1) A declaration that at least 3,000 seeds of the viable basic seed required to reproduce the variety will be deposited in a public depository approved by the Commissioner and will be maintained for the duration of the certificate; or

* * * * *

■ 3. Section 97.7 is added to read as follows:

§ 97.7 Deposit of Voucher Specimen.

(a) *Voucher specimen types.* As regards the deposit of voucher specimen material for purposes of plant variety protection applications under 7 U.S.C. 2321 *et seq.*, the term voucher specimen shall include material that is capable of self-replication either directly or indirectly. Representative examples include seeds, plant tissue cells, cell lines, and plots of vegetative material of self-incompatible parental lines of hybrids. Seed samples should not be treated with chemicals or coatings.

(b) *Need to make a deposit.* Applications for plant variety protection require deposit of a voucher specimen of the variety. The deposit shall be acceptable if made in accordance with these regulations. Sample packages shall meet the packaging and deposit requirements of the depository. Samples and correspondence about samples shall be identified, minimally, by:

(1) The application number assigned by the Office;

(2) The crop kind, genus and species, and variety denomination; and

(3) The name and address of the depositor.

(c) *Acceptable depository.* A deposit shall be recognized for the purposes of these regulations if made in:

(1) The National Center for Genetic Resources Preservation, ARS, USDA, 1111 South Mason Street, Fort Collins, CO 80521–4500, or

(2) Any other depository recognized to be suitable by the Office. Suitability will be determined by the Commissioner on the basis of the administrative and technical competence, and agreement of the depository to comply with the terms and conditions applicable to deposits for plant variety protection purposes. The Commissioner may seek the advice of impartial consultants on the suitability of a depository. The depository must:

(i) Have a continuous existence;

(ii) Exist independent of the control of the depositor;

(iii) Possess the staff and facilities sufficient to examine the viability and quantity of a deposit, and store the deposit in a manner which ensures that it is kept viable and uncontaminated;

(iv) Provide for sufficient safety measures to minimize the risk of losing biological material deposited with it;

(v) Be impartial and objective;

(vi) Refrain from distributing samples while the application is being examined and during the term of protection but, after control of the sample is transferred by the Office to the depository, furnish samples of the deposited material in an expeditious and proper manner;

(vii) Have the capability to destroy samples or return samples to the Office when requested by the Office; and

(viii) Promptly notify the Office of low viability or low quantity of the sample.

(3) A depository seeking status under paragraph (c)(2) of this section must direct a communication to the Commissioner which shall:

(i) Indicate the name and address of the depository to which the communication relates;

(ii) Contain detailed information as to the capacity of the depository to comply with the requirements of paragraph (c)(2) of this section, including information on its legal status, scientific standing, staff, and facilities;

(iii) Indicate that the depository intends to be available, for the purposes of deposit, to any depositor under these same conditions;

(iv) Where the depository intends to accept for deposit only certain kinds of biological material, specify such kinds; and

(v) Indicate the amount of any fees that the depository will, upon acquiring the status of suitable depository under paragraph (c)(2) of this section, charge for storage, viability statements and furnishings of samples of the deposit.

(4) A depository having status under paragraph (c)(2) of this section limited to certain kinds of biological material may extend such status to additional kinds of biological material by directing a communication to the Commissioner in accordance with paragraph (c)(3) of this section. If a previous communication under paragraph (c)(3) of this section is of record, items in common with the previous communication may be incorporated by reference.

(5) Once a depository is recognized to be suitable by the Commissioner or has defaulted or discontinued its performance under this section, notice thereof will be published in the Official Journal of the Plant Variety Protection Office or by other methods typically used for dissemination of information related to the procedures of the Office.

(d) *Time of making an original deposit.* An original deposit of materials for seed-reproduced plants shall be made within three months of the filing date of the application or prior to issuance of the certificate, whichever occurs first. A waiver may be granted for good cause, such as delays in obtaining a phytosanitary certificate for the importation of voucher sample materials. When the original deposit is made, the applicant must promptly submit a statement from a person in a position to corroborate the fact, stating that the voucher specimen material which is deposited is the variety specifically identified in the application as filed. Such statement must be filed in the application and must contain the identifying information listed in paragraph (b) of this section and:

(1) The name and address of the depository;

(2) The date of deposit;

(3) The accession number given by the depository; and

(4) A statement that the deposit is capable of reproduction.

(e) *Replacement or supplement of deposit.* If the depository possessing a deposit determines either that the sample viability is low or that the sample quantity is low, and if this finding is made during the pendency of an application or during the term of protection of the certificate, the Office shall notify the depositor of the need for making a replacement or supplemental deposit. Such deposits will be governed by the same considerations governing the need for making an original deposit under the provisions set forth in § 97.7(d). Notification to the Office concerning deposit of the replacement or supplemental sample shall contain a statement from a person in a position to corroborate the fact, stating that the replacement or supplemental deposit is of a biological material which is identical to that originally deposited.

(f) *Term of deposit.* A voucher specimen deposit made in support of an application for plant variety protection

shall be made for a term of at least twenty (20) years. In any case, samples must be stored under agreements that would make them available to the Office during the enforceable life of the certificate for which the deposit was made.

(g) *Viability of deposit.* A deposit of biological material that is capable of self-replication either directly or indirectly must be viable at the time of deposit and during the term of deposit. Viability may be tested by the depository periodically. The test must conclude only that the deposited material is capable of reproduction. No evidence necessarily is required regarding the ability of the deposited material to perform any function described in the application. If a viability test indicates that the deposit is not viable upon receipt or that the quantity of material is insufficient, the examiner shall proceed as if no deposit was made. The examiner will accept the conclusion set forth in a viability statement issued by a depository recognized under paragraph 97.7(c).

(h) *Furnishing of samples.* A deposit must be made under conditions that assure that:

(1) Public access to the deposit will not be available during pendency of the application or during the term of protection, and

(2) All restrictions on the availability to the public of the deposited material will be irrevocably removed upon the abandonment, cancellation, expiration, or withdrawal of the certificate.

(i) *Examination procedures.* The examiner shall determine, prior to issuance of the certificate, in each application if a voucher sample deposit actually made is acceptable for plant variety protection purposes.

■ 4. Section 97.175 is revised to read as follows:

§ 97.175 Fees and charges.

The following fees and charges apply to the services and actions specified below:

(a) Filing the application and notifying the public of filing—$518.00.

(b) Search or examination—$3,864.00.

(c) Submission of new application data, after notice of allowance, prior to issuance of certificate—$432.00.

(d) Allowance and issuance of certificate and notifying public of issuance—$768.00.

(e) Revive an abandoned application—$518.00.

(f) Reproduction of records, drawings, certificates, exhibits, or printed material (cost per page of material)—$1.80.

(g) Authentication (each page)—$1.80.

(h) Correcting or re-issuance of a certificate—$518.00.

(i) Recording an assignment, any revision of an assignment, or withdrawal or revocation of an assignment (per certificate or application)—$41.00.

(j) Copies of 8 x 10 photographs in color—$41.00.

(k) Additional fee for reconsideration—$518.00.

(l) Additional fee for late payment—$41.00.

(m) Fee for handling replenishment seed sample (applicable only for certificates issued after June 20, 2005)—$38.00.

(n) Additional fee for late replenishment of seed—$41.00.

(o) Filing a petition for protest proceeding—$4,118.00.

(p) Appeal to Secretary (refundable if appeal overturns the Commissioner's decision)—$4,942.00.

(q) Granting of extensions for responding to a request—$89.00.

(r) Field inspections by a representative of the Plant Variety Protection Office, made at the request of the applicant, shall be reimbursable in full (including travel, per diem or subsistence, and salary) in accordance with Standardized Government Travel Regulation.

(s) Any other service not covered above will be charged for at rates prescribed by the Commissioner, but in no event shall they exceed $107.00 per employee-hour. Charges also will be made for materials, space, and administrative costs.

Dated: September 13, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–18511 Filed 9–15–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20364; Directorate Identifier 2004–NM–186–AD; Amendment 39–14274; AD 2005–19–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 747 airplanes. This AD requires repetitive inspections of the dual side braces (DSBs), underwing midspar fittings, and associated parts; other specified actions; and corrective actions if necessary. This AD also provides an optional terminating action for the inspections and other specified actions. This AD is prompted by reports of corroded, migrated, and rotated bearings for the DSBs in the inboard and outboard struts, a report of a fractured retainer for the eccentric bushing for one of the side links of a DSB, and reports of wear and damage to the underwing midspar fitting on the outboard strut. We are issuing this AD to prevent the loss of a DSB or underwing midspar fitting load path, which could result in the transfer of loads and motion to other areas of a strut, and possible separation of a strut and engine from the airplane during flight.

DATES: This AD becomes effective October 21, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of October 21, 2005.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2005–20364; the directorate identifier for this docket is 2004–NM–186–AD.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Boeing Model 747 airplanes. That action, published in the **Federal Register** on February 14, 2005 (70 FR 7446), proposed to require repetitive inspections of the dual side braces (DSBs), underwing midspar fittings, and associated parts; other specified actions; and corrective actions

if necessary. That action also provides an optional terminating action for the inspections and other specified actions.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the proposed AD.

Support for the Proposed AD

One commenter concurs with the content of the proposed AD.

Requests to Refer to Revised Service Bulletin and Give Credit for Prior Issue

One commenter asks that the proposed AD reference Boeing Service Bulletin 747–54A2218, Revision 1, dated February 24, 2005. Boeing Alert Service Bulletin 747–54A2218, dated June 17, 2004, was referenced in the proposed AD as the appropriate source of service information for accomplishing the specified actions. The commenter states that Revision 1 specifies that no more work is necessary on airplanes changed per the original issue of the service bulletin. The commenter also asks that we give credit for actions done in accordance with the original issue of the service bulletin. The commenter notes that this will prevent additional work for the Civil Aviation Authorities that would necessitate approving Revision 1 as an alternative method of compliance. The commenter adds that the revised information specified in Revision 1 may be helpful for operators in accomplishing the actions required by the proposed AD. A second commenter asks that credit be given for the initial inspection done in accordance with the original issue of the service bulletin.

We agree with the commenters. We have reviewed Boeing Service Bulletin 747–54A2218, Revision 1, dated February 24, 2005. The instructions in Revision 1 are essentially the same as those in the original issue of the service bulletin. Accordingly, we have revised this AD to refer to Revision 1 of the service bulletin in the applicability section and as the applicable source of service information for accomplishing the actions required by this AD. We have also added a new paragraph (i) (and re-identified subsequent paragraphs accordingly) to give credit for actions accomplished before the effective date of this AD in accordance with the original issue of the service bulletin.

Requests to Remove/Delay Check for an Insufficient Gap/Delay Corrective Actions

One commenter questions why the check for an insufficient gap between the underwing midspar fitting and the strut midspar fitting is necessary if no discrepancies are found during the proposed inspections of the dual side brace (DSB) bearings. The commenter states that it was both surprising and disappointing to learn of reported interference between the underwing midspar fitting and the adjacent strut midspar fitting. The commenter states that, while recognizing that corrective actions should be accomplished only if conditions warrant such actions, any future adopted rule should consider the inclusion of options that will enable corrective actions to occur during planned D-check visits to minimize unplanned out-of-service situations. The commenter notes that the proposed AD includes a check for an insufficient gap between those fittings within 24 months. The commenter concludes that the check for an insufficient gap between those fittings should only be required if discrepancies are found during the inspection of the DSB bearings per Parts 1 and 2 of the referenced service bulletin.

A second commenter asks that paragraph (f) of the proposed AD be changed to postpone the requirement for accomplishing the corrective actions per Parts 3, 5, and 6 of the referenced service bulletin, if an insufficient gap is found per Part 4. The commenter states that those actions can be performed at its first FD-check, and until the actions are performed, the spring beam/wing fitting joint and DSB fitting can be inspected per the baseline inspection task specified in Boeing Service Bulletin 747–54A2182, Revision 1, dated January 8, 2004, but at a 3A interval. That service bulletin describes procedures for certain baseline inspections of the strut-to-wing attachment structure. The commenter adds that it has performed wing pylon modifications on more than 50 airplanes per Boeing Alert Service Bulletins 747–54A2156 (referenced in AD 95–13–06, amendment 39–9286, as the appropriate source of service information for modification of the nacelle strut and wing) and 747–54A2158 (referenced in AD 95–13–07, amendment 39–9287, as the appropriate source of service information for modification of the nacelle strut and wing), concurrently with Boeing Service Bulletin 747–57–2246, Revision 5, dated July 17, 1997. Boeing Service Bulletin 747–57–2246 describes procedures for modification of the nacelle strut attachment fittings. The commenter notes that Service Bulletin 747–57–2246 also describes procedures for checking the surface wear on the underwing fittings of the outboard pylon midspar that were caused by interference with the spring beam flanged bushings, and removal of any damage by spotfacing. The commenter states that only four of its airplanes required the spotfaces to be larger than what was allowed in the service bulletin, and the larger spotfaces were approved by the FAA. The commenter adds that cracks were never found in the wear/spotface area; however, several of the 50 airplanes must have had the insufficient gap condition for many years. The commenter concludes that if additional surface damage occurs on the underwing midspar fittings, it would be detected in a timely manner when performing the proposed inspections.

A third commenter, the airplane manufacturer, states that it is concerned with the comments regarding a no-gap condition that may exist during inspection, and the actions specified in paragraph (f) of the proposed AD per Parts 4, 5, and 6 of the referenced service bulletin. The commenter adds that a deferral for these actions may be justified for a no-gap condition, provided that no damage is found during the Part 4 inspection. The commenter's position is based on fleet history data with similar conditions, as provided by other commenters. The commenter may consider a change to the referenced service bulletin upon a recommended course of action, and will advise us accordingly. The commenter adds that we may choose to approve an alternative method of compliance (AMOC) on a case-by-case basis, at our discretion.

We acknowledge the new information provided by the commenters. The airplane manufacturer has informed us that it is planning to revise the service bulletin to reflect this new information by the end of 2005. Delaying this action until after the release and approval of the manufacturer's planned service bulletin is not warranted. We have determined that the inspections must be conducted to ensure continued operational safety. When a new revision of the service bulletin has been developed, we will review that revision and consider approving it as an alternative method of compliance with the requirements of this AD. In light of this, we have determined that all the actions required by this AD are appropriate and warranted. No change is made to the AD in this regard.

Additionally, insufficient technical justification was provided by the

commenters to justify delaying issuance of the AD; however, if sufficient technical justification is provided, we may approve an AMOC, in accordance with paragraph (j)(1) of the AD.

Requests to Change Costs of Compliance Section/Extend Compliance Time

One commenter states that we should revise the Costs of Compliance section that is specified in the preamble of the proposed AD. The language in that section states, ''The following table provides the estimated costs for U.S. operators to comply with this proposed AD.'' The commenter notes that the table provides the cost impact of the required inspections, but offers no estimate of the cost impact should an inspection detect the specific discrepancy that is the basis for the proposal. The commenter states that it is well aware that the FAA's policy for estimating the impact of proposed ADs does not include publishing the impact of aircraft re-routing, preparation, access, correction of discrepancies found, aircraft close-up, or return-to-flight tests and procedures, often categorizing them as ''incidental'' impacts. The commenter does not support that policy. The commenter states that, in this particular proposal, the impact of the man hours necessary for accomplishing the corrective action alone can be an order-of-magnitude greater than the per airplane cost published for comment. The commenter asks us to consider adopting a policy for proposed ADs that consistently states the per airplane impact of the prescribed corrective action in cases where that action is found necessary.

A second commenter states that it will be subjected to a huge economic impact when accomplishing the actions specified in the proposed AD, per the referenced service bulletin, due to the mandatory status of the follow-up inspections and modification after an insufficient gap is found. The commenter adds that the follow-up inspections require engine and pylon removal. The commenter lists, and we respond to, the following factors that will make the economic impact of the proposed AD even greater:

1. Experience with the modification specified in Part 3 of the referenced service bulletin shows that one of the DSB underwing fitting bolts may interfere with the modification tool. If a bolt interferes, it will have to be removed. Removal of a bolt requires removal of the WS 1140 rib to gain access to the DSB underwing fitting bolt for modification, which is a very time-consuming job.

Since we issued the proposed AD, this condition has not been reported by any other operators. In addition, accomplishing the modification is only necessary if damage or cracking is found, thus making it an on-condition action and not part of the inspections required by the AD.

2. The tooling kit specified in the referenced service bulletin limits the operator to modifying only one fitting on one pylon at a time, and not two or more pylons simultaneously. This results in additional downtime when more than one pylon must be modified.

As we stated previously, accomplishing the modification is an on-condition action. Obtaining the tooling kits necessary for accomplishing the modification should be addressed by operators on a case-by-case basis.

3. The airplane manufacturer does not seem ready to support so many modifications with tooling and material kits. Currently, the airplane manufacturer does not have enough tooling and material kits available to support all operators in the 24-month timeframe allowed for the modification.

We have no way of estimating how many operators will be accomplishing the on-condition modifications. The airplane manufacturer has confirmed that it will have the necessary tooling and material kits available to complete the on-condition actions required by the AD.

A third commenter states that the maintenance and economic impact of the proposed AD could be significantly greater than that specified in the ''Costs of Compliance'' section. The commenter notes that a review of labor estimates in the referenced service bulletin revealed that over 500 labor hours per airplane may be required to perform the necessary corrective actions if problems exist at all four engine strut to wing attachment locations. The commenter adds that this would raise the labor cost for compliance to over $30K per airplane; additionally, material costs total over $21K per airplane, plus tooling rental charges in excess of $1K per day are expected.

We do not agree with the commenters that request changing the work hours in this AD, because the AD reflects only the direct costs of the specific required actions based on the best data available from the manufacturer. We recognize that operators may incur incidental costs (such as the time for planning and associated administrative actions) in addition to the direct costs. The cost analysis in ADs, however, typically does not include incidental costs.

The 24-month compliance time for the initial inspection required by this AD should allow ample time for the majority of affected operators to do the required actions at the same time as scheduled major airplane inspection and maintenance activities, which would reduce the additional time and costs associated with special scheduling. We note that the 24-month compliance time is consistent with the compliance time specified in the referenced service bulletin. However, operators may submit a request for approval of an AMOC, as specified in paragraph (j)(1) of this AD. The request must include data substantiating that an acceptable level of safety would be maintained by extending the compliance time. No change is made to the AD in this regard.

Conclusion

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD with the changes described previously. These changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 1,091 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Part 1 Inspections, per inspection cycle.	8	$65	None	$520	229	$119,080, per inspection cycle.

ESTIMATED COSTS—Continued

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Part 2 Inspections, per inspection cycle.	48	65	None	3,120	229	714,480, per inspection cycle.
Part 4 Inspections, per inspection cycle.	4	65	None	260	229	59,540, per inspection cycle.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2005–19–09 Boeing: Amendment 39–14274. Docket No. FAA–2005–20364; Directorate Identifier 2004–NM–186–AD.

Effective Date

(a) This AD becomes effective October 21, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes; certificated in any category; as identified in Boeing Service Bulletin 747–54A2218, Revision 1, dated February 24, 2005.

Unsafe Condition

(d) This AD was prompted by reports of corroded, migrated, and rotated bearings for the dual side braces (DSB) in the inboard and outboard struts, a report of a fractured retainer for the eccentric bushing for one of the side links of a DSB, and reports of wear and damage to the underwing midspar fitting on the outboard strut. We are issuing this AD to prevent the loss of a DSB or underwing midspar fitting load path, which could result in the transfer of loads and motion to other areas of a strut, and possible separation of a strut and engine from the airplane during flight.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspections and Other Specified Actions

(f) At the times specified in Figure 1 of Boeing Service Bulletin 747–54A2218, Revision 1, dated February 24, 2005, except as provided by paragraph (g) of this AD: Do the various inspections and other specified actions in the figure to detect discrepancies of the DSBs, underwing midspar fittings, and associated parts, by doing all of the actions specified in Parts 1, 2, and 4; and the applicable corrective actions specified in Parts 3, 5, 6, and 7; of the Accomplishment Instructions of the service bulletin, except as provided by paragraph (h) of this AD. Repeat the inspections and other specified actions thereafter at the intervals specified in Figure 1 of the service bulletin. Accomplishment of any terminating action specified in Figure 1 of the service bulletin terminates the inspections and other specified actions for the affected strut.

(g) Where Boeing Service Bulletin 747–54A2218, Revision 1, dated February 24, 2005, recommends an initial compliance threshold of ''within 24 months after the original issue date on this service bulletin'' for Parts 1 and 4 of the service bulletin, and of ''within 72 months after the original issue date on this service bulletin'' for Part 2 of the service bulletin, this AD requires an initial compliance threshold of ''within 24 months after the effective date of this AD'' for Parts 1 and 4 of the service bulletin and of ''within 72 months after the effective date of this AD'' for Part 2 of the service bulletin.

Corrective Actions

(h) If any damage or crack is found during any inspection or corrective action required by this AD, before further flight, repair in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–54A2218, Revision 1, dated February 24, 2005; except, where the service bulletin specifies to contact Boeing, before further flight, repair according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Actions Accomplished According to Previous Issue of Service Bulletin

(i) Inspections and other specified and corrective actions accomplished before the effective date of this AD in accordance with

Boeing Alert Service Bulletin 747–54A2218, dated June 17, 2004, are considered acceptable for compliance with the corresponding actions specified in paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(k) You must use Boeing Service Bulletin 747–54A2218, Revision 1, dated February 24, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on September 8, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18313 Filed 9–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21140; Directorate Identifier 2004–NM–274–AD; Amendment 39–14273; AD 2005–19–08]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–14, DC–9–15, and DC–9–15F Airplanes; and McDonnell Douglas Model DC–9–20, DC–9–30, DC–9–40, and DC–9–50 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all transport category airplanes listed above. This AD requires repetitive inspections for cracks of the main landing gear (MLG) shock strut cylinder, and related investigative and corrective actions if necessary. This AD results from two reports of a collapsed MLG and a report of cracks in two MLG cylinders. We are issuing this AD to detect and correct fatigue cracks in the shock strut cylinder of the MLG, which could result in a collapsed MLG during takeoff or landing, and possible reduced structural integrity of the airplane.

DATES: This AD becomes effective October 21, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of October 21, 2005.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all McDonnell Douglas Model DC–9–14, DC–9–15, and DC–9–15F airplanes; Model DC–9–21 airplanes; Model DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, and DC–9–32F (C–9A, C–9B) airplanes; Model DC–9–41 airplanes; and Model DC–9–51 airplanes. That NPRM was published in the **Federal Register** on May 9, 2005 (70 FR 24338). That NPRM proposed to require repetitive inspections for cracks of the main landing gear (MLG) shock strut cylinder, and related investigative and corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request to Refer to Latest Service Bulletin Revision

The commenter, an airplane operator, states that the manufacturer is planning to revise Boeing Alert Service Bulletin DC9–32A350, dated December 3, 2004, which was cited as the appropriate source of service information for the action in the NPRM. The commenter asks that we revise paragraph (f) to refer to the new revision of the service bulletin, and that we also give credit for the actions done in accordance with the original issue of the service bulletin. In addition, the commenter requests that we address certain references in the service bulletin that are incorrect.

We agree with the commenter. We have revised paragraph (f) of the final rule to refer to Boeing Alert Service Bulletin DC9–32A350, Revision 1, dated August 3, 2005, as the appropriate source of service information. We have also added a new paragraph (l) to give credit for the actions done in accordance with the original issue of the service bulletin, and re-identified the subsequent paragraph accordingly. Revision 1 of the service bulletin does not increase the scope of the AD;

however it corrects certain references, including incorrect references to certain procedures for paint removal from the inspection area.

Request to Add Optional Terminating Action

The same commenter states that the manufacturer has designed a new-material shock strut cylinder that is not air-melted. The commenter states that installing this new part should be considered as an optional terminating action for the inspections in the NPRM. The commenter points out that cylinders that are not air-melted are not subject to the unsafe condition addressed in the NPRM.

We disagree with the commenter. The manufacturer has advised us it has designed a new-material shock strut cylinder that is not air-melted, although this part is not yet available. However, operators may request alternative methods of compliance with the requirements of this rule; paragraph (n) of the final rule includes a provision for the approval of such methods. We have not changed the final rule in this regard.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 644 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection, per inspection cycle.	4 to 6	$65	None	$260 to $390	426	$110,760 to $166,140, per inspection cycle.

Authority for this Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2005–19–08 McDonnell Douglas: Amendment 39–14273. Docket No. FAA–2005–21140; Directorate Identifier 2004–NM–274–AD.

Effective Date

(a) This AD becomes effective October 21, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Model DC–9–14, DC–9–15, and DC–9–15F airplanes; Model DC–9–21 airplanes; Model DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, and DC–9–32F (C–9A, C–9B) airplanes; Model DC–9–41 airplanes; and Model DC–9–51 airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from two reports of a collapsed main landing gear (MLG) and a report of cracks in two MLG cylinders. We are issuing this AD to detect and correct fatigue cracks in the shock strut cylinder of the MLG, which could result in a collapsed MLG during takeoff or landing, and possible reduced structural integrity of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Service Bulletin Reference Paragraph

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–32A350, Revision 1, dated August 3, 2005.

Records Review

(g) Before the applicable compliance time specified in paragraph (h) or Table 1 of this AD, as applicable, do the applicable actions in paragraphs (g)(1) and (g)(2) of this AD.

(1) For all airplane groups: Review the airplane maintenance records of the MLG to

determine its service history and the number of landings on the MLG shock strut cylinder.

(2) For Group 3 airplanes identified in the service bulletin: Review the maintenance records to determine if the MLG cylinder on each Group 3 airplane has always been on a Group 3 airplane, and do the actions in paragraph (k) of this AD.

Inspection

(h) Inspect the MLG shock strut cylinders for cracks using the Option 1 or Option 2 non-destructive testing inspection described in the service bulletin. Inspect in accordance with the Accomplishment Instructions of the service bulletin. Do the detailed inspection before the accumulation of 60,000 total landings on the MLG, or at the applicable grace period specified in Table 1 of this AD, whichever occurs later, except as provided by paragraph (k) of this AD. If the review of maintenance records is not sufficient to conclusively determine the service history and number of landings on the MLG shock strut cylinder, perform the initial inspection at the applicable grace period specified in Table 1 of this AD.

TABLE 1.—GRACE PERIOD AND REPETITIVE INTERVAL

Airplanes identified in the service bulletin as group	Grace period	Repetitive interval
1	Within 18 months or 650 landings after the effective date of this AD, whichever occurs first.	Intervals not to exceed 650 landings.
2	Within 18 months or 500 landings after the effective date of this AD, whichever occurs first.	Intervals not to exceed 500 landings.
3, except as provided by paragraph (k) of this AD.	Within 18 months or 2,500 landings after the effective date of this AD, whichever occurs first.	Intervals not to exceed 2,500 landings.
4	Within 18 months or 2,100 landings after the effective date of this AD, whichever occurs first.	Intervals not exceed 2,100 landings.

No Crack Indication Found

(i) If no crack indication is found during the inspection required by paragraph (h) of this AD, repeat the inspection at the applicable interval specified in Table 1 of this AD.

Related Investigative and Corrective Actions

(j) If any crack indication is found during any inspection required by paragraph (h) or (i) of this AD, before further flight: Confirm the crack indication by doing all applicable related investigative actions and doing the applicable corrective actions in accordance with the service bulletin. Repeat the inspection at the applicable threshold and interval specified in paragraph (h) of this AD.

MLG Cylinder Previously Installed on Group 4 Airplanes

(k) For MLG cylinders on Group 3 airplanes as identified in the service bulletin: If the MLG cylinder was previously installed on a Group 4 airplane, as identified in the service bulletin, or if the service history and number of landings cannot be determined, the MLG cylinder must be inspected at the grace period and repetitive interval that applies to Group 4 airplanes, as specified in Table 1 of this AD.

Actions Accomplished in Accordance With Original Issue of Service Bulletin

(l) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin DC9–32A350, dated December 3, 2004, are acceptable for compliance with the corresponding actions required by this AD.

Alternative Methods of Compliance (AMOCs)

(m) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(n) You must use Boeing Alert Service Bulletin DC9–32A350, Revision 1, dated August 3, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on September 7, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18314 Filed 9–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21864; Directorate Identifier 2005–NE–29–AD; Amendment 39–14276; AD 2005–19–11]

RIN 2120–AA64

Airworthiness Directives; Lycoming Engines (Formerly Textron Lycoming) AEIO–360, IO–360, O–360, LIO–360, LO–360, AEIO–540, IO–540, O–540, and TIO–540 Series Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Lycoming Engines (formerly Textron Lycoming) AEIO–360, IO–360, O–360, LIO–360, LO–360, AEIO–540, IO–540, O–540, and TIO–540 series reciprocating engines rated at 300 horsepower (HP) or lower. This AD requires replacing certain crankshafts. This AD results from reports of 12 crankshaft failures in Lycoming 360 and 540 series engines rated at 300 HP or lower. We are issuing this AD to prevent failure of the crankshaft, which could result in total engine power loss, in-flight engine failure, and possible loss of the aircraft.

DATES: This AD becomes effective October 21, 2005. The Director of the Federal Register approved the incorporation by reference of certain

publications listed in the regulations as of October 21, 2005.

ADDRESSES: You can get the service information identified in this AD from Lycoming, 652 Oliver Street, Williamsport, PA 17701; telephone (570) 323–6181; fax (570) 327–7101, or on the Internet at *http://www.Lycoming.Textron.com.*

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine & Propeller Directorate, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7337; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to Lycoming Engines (formerly Textron Lycoming) AEIO–360, IO–360, O–360, LIO–360, LO–360, AEIO–540, IO–540, O–540, and TIO–540 series reciprocating engines rated at 300 horsepower (HP) or lower. We published the proposed AD in the **Federal Register** on July 22, 2005 (70 FR 42282). That action proposed to require replacing certain crankshafts within 50 hours time-in-service or 6 months after the effective date of the proposed AD, whichever is earlier.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Will Additional Engines and Crankshafts Be Affected in the Future

One commenter asks if additional serial numbered engines and crankshafts will be affected in the future.

At this time we do not anticipate that the affected population will increase, but Lycoming and the FAA are monitoring crankshaft performance.

Affected Engines and Crankshafts

The same commenter asks why these engines and crankshafts are the only ones affected by the SB and AD.

Both the previous AD (2002–19–03) and this AD advise that the affected population of engines and crankshafts were manufactured in a specific time period. We are addressing that time period.

Suspect Crankshafts Should Be Either Tested or Replaced

One commenter states that suspect crankshafts should be either tested or replaced before further flight, because the problem with these crankshafts is similar to the problem that caused the crankshaft failures on the 540 engines.

We disagree. The compliance interval in this AD is based on an assessment of operating stresses, service experience, and duty cycle of the affected engine population. The compliance interval differs from that imposed in AD 2002–19–03 due to differences in these parameters.

Request To Include Lycoming TIO–540–AE2A and Other Unspecified Engine Models

One commenter requests that we include the Lycoming TIO–540–AE2A and other unspecified engine models in this AD. The commenter states that many of the TIO–540–AE2A engines have never been recalled or replaced yet should be, because recent litigation has shown that Lycoming's crankshaft end core sample test is insufficient.

We disagree. We have seen no evidence that refutes the validity of the test. Further, AD 2002–19–03 (the previous AD) effective on September 20, 2002, described two groups of crankshafts. We required one crankshaft group to be removed before further flight, and we required the other crankshaft group to have a sample of the crankshaft material tested. The crankshafts in each group were selected based on our evaluation of the risk both groups presented. Crankshafts from either group may be installed in the TIO–540–AE2A engine model. No failures of crankshafts listed in either group have occurred since.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD will affect 1,128 engines installed on aircraft of U.S. registry. We estimate that it will take the following work hours to perform the inspection:

Type of application	Work-hours per engine	Number of engines affected
Helicopter	12	200
Constant-Speed Propeller	3	557
Fixed-Pitch Propeller	1.5	371

We also estimate that it will take about 33 work hours to replace the crankshaft. We estimate the average labor rate is $65 per work hour and that required parts for each engine will cost about $16,218. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $18,594,724. Lycoming Engines informed us that they intend to supply the new parts at no charge, which may substantially reduce the estimated cost of this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2005–19–11 Lycoming Engines: Amendment 39–14276. Docket No. FAA–2005–21864; Directorate Identifier 2005–NE–29–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 21, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Lycoming Engines (Formerly Textron Lycoming) AEIO–360, IO–360, O–360, LIO–360, LO–360, AEIO–540, IO–540, O–540, and TIO–540 series reciprocating engines, rated at 300 horsepower (HP) or lower, manufactured new, rebuilt, overhauled after March 1, 1999, or that had a crankshaft installed after March 1, 1999. These engines are installed on, but not limited to, the following aircraft:

Engine model	Manufacturer	Aircraft model
IO–540–V4A5	A.M.F	17–D Mushshak
	Aero Commander	500 B, S, U/Merlyn Products Conv.
IO–540–E1A5	Aero Commander	500–E
	Aerofab	LA 250 Renegade
	Aeronautica	Agricola Mexicana Quail
IO–540–K1F5	Aerostar	600
	Aircraft Manufacturing Factory	Mushshak
O–540–E4A5	Aviamilano	F–250 Flamingo
IO–540–C4B5	Avions	Pierre Robin HR–100/250
LO–360–A1G6D	Beech	76 Duchess
O–360–A1G6D		76 Duchess
		C–24R Sierra or 200 Sierra
	Bellanca	Aircraft Aries T–250
O–540–E4B5	Britten Norman	BN–2 Islander
O–540–E4C5		BN–2A & BN–2B Islander
IO–540–K1B5		BN–2A Islander
	Celair	Eagle
O–360–A1F6	Cessna	177 Cardinal
O–360–A1F6D		177 Cardinal
O–540–J3C5D		182–RG Skylane
IO–540–AB1A5		182–S
O–360–F1A6		C–172RG Cutlass RG
IO–540–AC1A5		C–206 Stationair
		R–G Cardinal
IO–360–A1B6D		R–G Cardinal
TIO–540–AK1A		T182T Skylane
O–540–L3C5D		TR–182 Turbo Skylane
AEIO–540–D4A5	Christen Pitts	S–2S, S–2B
IO–540–T4B5D	Commander	114
IO–540–T4B5		114B
TIO–540–AG1A		114TC
	Dornier	DO–28
IO–540–K1J5D	Embraer	EMB–201 Ipanema
O–540–B4B5		EMB–710 Corioca
		EMB–720 Minuano
		EMB–720 Minuano & EMB–721 Sertanejo
		EMB–721 Sertanejo
AEIO–540–L1B5	Extra-Flugzeugbau	Extra 300
	F.F.A	FFA–2000 Eurotrainer
	H.A.L	HPT–32
O–540–A1A5	Helio Military	H–250
AEIO–360–A1E6	Integrated Systems	Omega
IO–540–M1C5	King Engineering	Angel
	Korean Air	Chang Gong–91
	Lake	LA–4–200 Buccaneer
O–540–J3A5	Maule.	
		MT–7–260 & M–7–260
		MX–7–235 Star Rocket
IO–540–W1A5		MX–7–235, MT–7–235 & M7–235
	Mod Works	Trophy 212 Conversion
IO–360–A3B6	Mooney	201
		M–201

Engine model	Manufacturer	Aircraft model
IO–360–A1B6		M–20–J
IO–360–A3B6D		M20J–201
TIO–540–AF1B		M20M TLS Bravo
	Moravan	Z143L Zlin
		Z242L Zlin
	Partenavia	P–68 Series Observer
IO–540–K1J5	Piper	600–A Aerostar
IO–540–S1A5		601–A, 601B & 601P Aerostar
IO–540–AA1A5		602P Sequoia
O–540–A1B5		PA–23–235 Aztec & PA–24–250 Comanche
		PA–23–250 Aztec
IO–540–J4A5		PA–23–250 Aztec
IO–540–C1B5		PA–23–250 Aztec & PA–24–250 Comanche
TIO–540–C1A		PA–23–250T Turbo Aztec
		PA–24–150 Comanche
O–540–A1C5		PA–24–250 Comanche
O–540–A1D5		PA–24–250 Comanche
IO–540–D4A5		PA–24–260 Comanche
		PA–24–260 Comanche
O–540–B2C5		PA–25–235 Pawnee
O–540–B2B5		PA–28–235 Cherokee
		PA–28–235 Cherokee
IO–360–C1C6		PA–28R–201 Arrow
IO–540–M1A5		PA–31–300 Navajo
		PA–32–260 Cherokee 6
IO–540–K1G5		PA–32–300 & PA–32–301 Saratoga
IO–540–K1A5		PA–32–300 Cherokee 6
IO–540–K1A5D		PA–32–300 Cherokee 6
IO–540–K1G5D		PA–32–300R Lance
		PA–32–301R Saratoga
IO–360–C1E6		PA–34–200 Seneca I
IO–540–K1G5		PA–36–300 Brave
O–360–A1H6		PA–44–180
LO–360–A1H6		PA–44–180 Seminole
IO–540–K1K5		T–35 Pillan
	Robin	R–3000/235
O–540–F1B5	Robinson	R–44
	Rockwell	114
	Ruschmeyer	MF–85
	Saab	MFI–15 Safari or MFI–17 Supporter
	Scottish Avia	Bulldog
	Siai Marchetti	S–205
	Siai Marchetti	S–208 & SF–260
	Siai Marchetti	SF–260
	Siai Marchetti	SF–260
	Slingsby	Firefly T3A
	Socata	R–235 Rallye Cuerrier
		Rallye 235CA
IO–540–C4D5D		TB–20 Trinidad
		TB–200
TIO–540–AB1AD		TB–21 & TB–21–TC Trinidad TC
IO–540–AB1A5	Stoddard Hamilton	Glasair
IO–540–K1H5	Stoddard Hamilton	Glasair III
IO–540–L1C5	Swearingen Aircraft	SX–300
	Transava	T–300 Skyfarmer
AEIO–360–A1B6	Valmet	L–70 Vinka
	Wassmer	WA4–21
	Yoeman	Aviation YA–1

Unsafe Condition

(d) This AD results from 12 crankshaft failures in Lycoming model 360 and 540 series engines rated at 300 HP or lower. We are issuing this AD to prevent failure of the crankshaft, which could result in total engine power loss, in-flight engine failure, and possible loss of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within 50 hours time-in-service or 6 months after the effective date of this AD, whichever is earlier, unless the actions have already been done.

Engines Manufactured Before March 1, 1999

(f) If Lycoming Engines manufactured new, rebuilt, or overhauled your engine before March 1, 1999, and you haven't had the crankshaft replaced, no further action is required.

AEIO–540, IO–540, O–540, and TIO–540 Series Engines Manufactured New or Rebuilt, Overhauled, or That Had a Crankshaft Installed After March 1, 1999

(g) For AEIO–540, IO–540, O–540, and TIO–540 series engines manufactured new or rebuilt, overhauled, or that had a crankshaft installed after March 1, 1999, do the following:

(1) If Table 1 or Table 2 of Lycoming Mandatory Service Bulletin (MSB) No. 566, dated July 11, 2005, lists your engine serial

number (SN), use Table 4 to verify the crankshaft SN.

(2) If Table 4 of Lycoming MSB No. 566, dated July 11, 2005, lists your crankshaft SN, replace the crankshaft with a crankshaft that is not listed in Table 4 of Lycoming MSB No. 566, dated July 11, 2005.

AEIO–360, IO–360, O–360, LIO–360, and LO–360 Series Engines Manufactured New or Rebuilt, Overhauled, or That Had a Crankshaft Installed After March 1, 1999

(h) For AEIO–360, IO–360, O–360, LIO–360, and LO–360 series engines manufactured new or rebuilt, overhauled, or that had a crankshaft installed after March 1, 1999, do the following:

(1) If Table 3 of Lycoming MSB No. 566, dated July 11, 2005, lists your engine SN, use Table 4 to verify the crankshaft SN.

(2) If Table 4 of Lycoming MSB No. 566, dated July 11, 2005, lists your crankshaft SN, replace the crankshaft with a crankshaft that is not listed in Table 4 of Lycoming MSB No. 566, dated July 11, 2005.

Prohibition Against Installing Certain Crankshafts

(i) After the effective date of this AD, do not install any crankshaft that has a SN listed in Table 4 of Lycoming MSB No. 566, dated July 11, 2005, into any engine.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, New York Aircraft Certification Office, has the authority to approve AMOCs for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(k) None.

Material Incorporated by Reference

(l) You must use Lycoming Mandatory Service Bulletin No. 566, dated July 11, 2005, to perform the actions required by this AD. The Director of the **Federal Register** approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Lycoming, 652 Oliver Street, Williamsport, PA 17701; telephone (570) 323–6181; fax (570) 327–7101, or on the Internet at *http://www.Lycoming.Textron.com* for a copy of this service information. You may review copies at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001, on the Internet at *http://dms.dot.gov*, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on September 9, 2005.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–18323 Filed 9–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22430; Directorate Identifier 2005–NE–34–AD; Amendment 39–14275; AD 2005–19–10]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Arrius 2 F Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Turbomeca Arrius 2 F turboshaft engines. This AD requires removing from service certain serial number (SN) fuel control units (FCUs) or replacing the constant delta pressure diaphragm in those FCUs. This AD results from a report of an accident in July 2005 involving a Eurocopter EC120B helicopter. We are issuing this AD to prevent an uncommanded engine in-flight shutdown on a single-engine helicopter, resulting in a forced autorotation landing or an accident.

DATES: Effective October 3, 2005. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of October 3, 2005.

We must receive any comments on this AD by November 15, 2005.

ADDRESSES: Use one of the following addresses to comment on this AD:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Turbomeca, 40220 Tarnos, France; telephone +33 05 59 74 40 00, fax +33 05 59 74 45 15, for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Turbomeca Arrius 2 F turboshaft engines. The DGAC advises that a Eurocopter EC120B helicopter powered by an Arrius 2 F turboshaft engine experienced an uncommanded in-flight engine shutdown. An increase in fuel flow led to an increase in gas generator and power turbine speeds. Turbine blades separated from the disk due to the overspeed. Turbomeca determined that the fuel flow increase was caused by an improperly assembled and subsequent failure of the constant delta pressure (delta P) diaphragm in the FCU. Only certain types of constant delta P diaphragms have been identified as being capable of being improperly assembled. Engine serial numbers that may have this type of constant delta P diaphragm are listed in Turbomeca Alert Mandatory Service Bulletin (MSB) No. A319 73 4825, dated August 3, 2005. The manufacturer is making spare FCUs available as fast as possible and has established a rotable pool of spares. After we reviewed the Turbomeca SB, we concluded that using the Turbomeca rotable pool of spares as soon as practicable effectively manages the risk of another failure of the uninspected engine population. To this end, we are requiring that FCUs identified in the Turbomeca SB be replaced as soon as practicable but not to exceed February 28, 2006. Because the practicable compliance time may be quite short for some operators and the rotable pool requires consistent participation, we are issuing this AD as final rule; request for comments.

Relevant Service Information

We have reviewed and approved the technical contents of Turbomeca Alert MSB No. A319 73 4825, dated August 3, 2005. That MSB lists the affected FCUs by SN and describes procedures for removing affected FCUs from service or replacing constant delta P diaphragms in those FCUs. The DGAC classified this service bulletin as mandatory and issued AD No. F–2005–143, dated August 17, 2005, and AD No. F–2005–143 R1, dated August 31, 2005, in order to ensure the airworthiness of these Arrius 2 F turboshaft engines in France.

Bilateral Airworthiness Agreement

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the DGAC kept the FAA informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of this AD

The unsafe condition described previously is likely to exist or develop on other Turbomeca Arrius 2 F turboshaft engines of the same type design. We are issuing this AD to prevent an uncommanded engine in-flight shutdown on a single-engine helicopter, resulting in a forced autorotation landing or an accident. This AD requires removing from service certain SN FCUs or replacing the constant delta P diaphragm in those FCUs. You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. FAA–2005–22430; Directorate Identifier 2005–NE–34–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the DMS Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the DMS receives them.

Authority for this Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2005–19–10 Turbomeca: Amendment 39–14275. Docket No. FAA–2005–22430; Directorate Identifier 2005–NE–34–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 3, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca Arrius 2 F turboshaft engines with the fuel control units listed by serial number (SN) in Turbomeca Alert Mandatory Service Bulletin (MSB) No. A319 73 4825, dated August 3, 2005. These engines are installed on, but not limited to, Eurocopter EC120B helicopters.

Unsafe Condition

(d) This AD results from a report of an accident in July 2005 involving a Eurocopter EC120B helicopter. We are issuing this AD to prevent an uncommanded engine in-flight shutdown on a single-engine helicopter, resulting in a forced autorotation landing or an accident.

Compliance

(e) You are responsible for having the actions required by this AD performed as soon as practicable after the effective date of this AD but no later than February 28, 2006, unless the actions have already been done.

(f) Remove FCUs listed by serial number (SN) in Turbomeca Alert Mandatory Service

Bulletin (MSB) No. A319 73 4825, dated August 3, 2005.

(g) Install an FCU not listed in Turbomeca Alert MSB No. A319 73 4825, dated August 3, 2005; or one with a new constant delta pressure diaphragm installed using paragraph 2.B. of Turbomeca Alert MSB No. A319 73 4825, dated August 3, 2005.

Alternative Methods of Compliance

(h) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) DGAC airworthiness directives No. F–2005–143, dated August 17, 2005, and No. F–2005–143 R1, dated August 31, 2005, also address the subject of this AD.

Material Incorporated by Reference

(j) You must use Turbomeca Alert Mandatory Service Bulletin (MSB) No. A319 73 4825, dated August 3, 2005, to perform the actions required by this AD. The Director of the **Federal Register** approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Turbomeca, 40220 Tarnos, France; telephone +33 05 59 74 40 00, fax +33 05 59 74 45 15, for a copy of this service information. You may review copies at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001, on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Burlington, Massachusetts, on September 9, 2005.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–18322 Filed 9–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30456 ; Amdt. No. 3133]

Standard Instrument Approach Procedures, Weather Takeoff Minimums; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and/or Weather Takeoff Minimums for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective September 16, 2005. The compliance date for each SIAP and/or Weather Takeoff Minimums is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 16, 2005.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

For Purchase—Individual SIAP and Weather Takeoff Minimums copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs and Weather Takeoff Minimums mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), establishes, amends, suspends, or revokes SIAPs and/or Weather Takeoff Minimums. The complete regulatory description of each SIAP and/or Weather Takeoff Minimums is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, 8260–5 and 8260–15A. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs and/or Weather Takeoff Minimums, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs and/or Weather Takeoff Minimums but refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP and/or Weather Takeoff Minimums contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs and/or Weather Takeoff Minimums. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and/or Weather Takeoff Minimums as contained in the transmittal. Some SIAP and/or Weather Takeoff Minimums amendments may have been previously issued by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP, and/or Weather Takeoff Minimums amendments may require making them effective in less than 30 days. For the remaining SIAPs and/or Weather Takeoff Minimums, an effective date at

least 30 days after publication is provided.

Further, the SIAPs and/or Weather Takeoff Minimums contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and/or Weather Takeoff Minimums, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and/or Weather Takeoff Minimums and safety in air commerce, I find that notice and public procedure before adopting these SIAPs and/or Weather Takeoff Minimums are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs and/or Weather Takeoff Minimums effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97:

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on September 9, 2005.

James J. Ballough,

Director, Flight Standards Service.

Adoption of The Amendment

■ Accordingly, pursuant to the authority delegated to me, under Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and Weather Takeoff Minimums effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 27 October 2005

Cordova, AK, Merle K (Mudhole) Smith, NDB/DME–A, Amdt 1
Kaltag, AK, Kaltag, RNAV (GPS) RWY 3, Orig
Koyuk, AK, Koyuk Alfred Adams, RNAV (GPS) RWY 1, Orig
Koyuk, AK, Koyuk Alfred Adams, NDB RWY 1, Amdt 1
Koyuk, AK, Koyuk Alfred Adams, NDB/DME RWY 1, Amdt 1
Heber Springs, AR, Heber Springs Muni, RNAV (GPS) RWY 5, Orig
Heber Springs, AR, Heber Springs Muni, RNAV (GPS) RWY 23, Orig
Heber Springs, AR, Heber Springs Muni, NDB or GPS RWY 5, Orig, CANCELLED
San Francisco, CA, San Francisco International, ILS OR LOC RWY 28R; ILS RWY 28R (CAT II); ILS RWY 28R (CAT III), Amdt 11
San Francisco, CA, San Francisco International, RNAV (GPS) Z RWY 28R, Amdt 2
Groton (New London), CT, Groton-New London, VOR RWY 5, Amdt 8
Groton (New London), CT, Groton-New London, VOR RWY 23, Amdt 10
Groton (New London), CT, Groton-New London, ILS OR LOC RWY 5, Amdt 11
Groton (New London), CT, Groton-New London, RNAV (GPS) RWY 5, Orig
Groton (New London), CT, Groton-New London, RNAV (GPS) RWY 23, Orig
Groton (New London), CT, Groton-New London, RNAV (GPS) RWY 33, Orig
Groton (New London), CT, Groton-New London, GPS RWY 33, Amdt 1A, CANCELLED
Groton (New London), CT, Groton-New London, Takeoff Minimums and Textual DP, Amdt 7
Kaunakakai, HI, Molokai, Takeoff Minimums and Textual DP, Amdt 5
Hailey, ID, Friedman Memorial, RNAV (GPS) W RWY 31, Amdt 1
Hailey, ID, Friedman Memorial, RNAV (RNP) Y RWY 31, Orig
Cahokia, IL, St. Louis Downtown, RNAV (GPS) RWY 12R, Orig
Chicago, IL, Chicago O'Hare Intl, ILS OR LOC RWY 27R, Amdt 26, ILS RWY 27R (CAT II), ILS RWY 27R (CAT III)
Chicago, IL, Chicago O'Hare Intl, ILS OR LOC RWY 27L, Amdt 13, ILS RWY 27L (CAT II), ILS RWY 27L (CAT III)
Chicago, IL, Chicago O'Hare Intl, NDB RWY 27R, Amdt 23, CANCELLED
Peoria, IL, Greater Peoria Regional, RNAV (GPS) RWY 4, Amdt 1
Peoria, IL, Greater Peoria Regional, RNAV (GPS) RWY 13, Amdt 1
Peoria, IL, Greater Peoria Regional, RNAV (GPS) RWY 22, Amdt 1
Peoria, IL, Greater Peoria Regional, RNAV (GPS) RWY 31, Amdt 1
Peoria, IL, Greater Peoria Regional, ILS OR LOC RWY 4, Amdt 1
Peoria, IL, Greater Peoria Regional, ILS OR LOC RWY 31, Amdt 7
Peoria, IL, Greater Peoria Regional, VOR/DME OR TACAN RWY 31, Amdt 9
Sparta, IL, Sparta Community-Hunter Field, RNAV (GPS) RWY 36, Orig
Fort Leavenworth, KS, Sherman AAF, Takeoff Minimums and Textual DP, Orig
Newton, KS, Newton-City-County, RNAV (GPS) RWY 17, Orig
Newton, KS, Newton-City-County, RNAV (GPS) RWY 35, Orig
Newton, KS, Newton-City-County, ILS OR LOC RWY 17, Amdt 4
Newton, KS, Newton-City-County, GPS RWY 17, Orig, CANCELLED
Newton, KS, Newton-City-County, GPS RWY 35, Orig, CANCELLED
Newton, KS, Newton-City-County, VOR/DME RNAV RWY 17, Amdt 2, CANCELLED
Newton, KS, Newton-City-County, VOR/DME RNAV RWY 35, Amdt 2, CANCELLED
Newton, KS, Newton-City-County, VOR/DME–A, Amdt 3
Olathe, KS, Johnson County Executive, Takeoff Minimums and Textual DP, Orig
Olathe, KS, New Century Aircenter, Takeoff Minimums and Textual DP, Orig
Tallulah, LA, Vicksburg Tallulah Rgnl, LOC RWY 36, Amdt 2
Fort Meade (Odenton), MD, Tipton, VOR–A, Amdt 1
Fort Meade (Odenton), MD, Tipton, NDB RWY 10, Amdt 1
Fort Meade (Odenton), MD, Tipton, RNAV (GPS) RWY 10, Amdt 1
Gaithersburg, MD, Montgomery County Airpark, RNAV (GPS) RWY 14, Amdt 3
Hibbing, MN, Chisholm-Hibbing, ILS OR LOC/DME RWY 13, Amdt 1
Hibbing, MN, Chisholm-Hibbing, ILS OR LOC RWY 31, Amdt 13
Minneapolis, MN, Anoka County-Blaine Aprt (Janes Field), Takeoff Minimums and Textual DP, Amdt 3
Minneapolis, MN, Flying Cloud, Takeoff Minimums and Textual DP, Amdt 3
Minneapolis, MN, Minneapolis-St. Paul Intl/Wold-Chamberlain, RNAV (GPS) RWY 35, Orig
Minneapolis, MN, Minneapolis-St. Paul Intl/Wold-Chamberlain, ILS OR LOC RWY 35, ILS RWY 35 (CAT II), ILS RWY 35 (CAT III), Orig
Minneapolis, MN, Minneapolis-St. Paul Intl/Wold-Chamberlain, CONVERGING ILS RWY 35, Orig
Minneapolis, MN, Minneapolis-St. Paul Intl/Wold-Chamberlain, CONVERGING ILS RWY 30L, Orig
Minneapolis, MN, Minneapolis-St. Paul Intl/Wold-Chamberlain, CONVERGING ILS RWY 30R, Orig
Minneapolis, MN, Minneapolis-St. Paul Intl/Wold-Chamberlain, LOC RWY 17, Orig
Minneapolis, MN, Minneapolis-St. Paul Intl/Wold-Chamberlain, Takeoff Minimums and Textual DP, Amdt 10
St. Paul, MN, St. Paul Downtown Holman Field, Takeoff Minimums and Textual DP, Amdt 6

Kansas City, MO, Charles B. Wheeler Downtown, Takeoff Minimums and Textual DP, Amdt 2
Kansas City, MO, Kansas City Intl, Takeoff Minimums and Textual DP, Orig
St. Charles, MO, St. Charles County Smartt, RNAV (GPS) RWY 18, Orig
St. Charles, MO, St. Charles County Smartt, VOR RWY 18, Amdt 1
St. Charles, MO, St. Charles County Smartt, GPS RWY 18, Orig, CANCELLED
St. Charles, MO, St. Charles County Smartt, Takeoff Minimums and Textual DP, Amdt 2
St. Joseph, MO, Rosecrans Memorial, Takeoff Minimums and Textual DP, Amdt 6
St. Louis, MO, Lambert-St. Louis Intl, LDA PRM RWY 30L, Orig (Simultaneous Close Parallel)
St. Louis, MO, Lambert-St. Louis Intl, LDA/DME RWY 30L, Orig
St. Louis, MO, Lambert-St. Louis Intl, ILS PRM RWY 30R, Orig (Simultaneous Close Parallel)
St. Louis, MO, Lambert-St. Louis Intl, ILS OR LOC RWY 30R, ILS RWY 30R (CAT II), ILS RWY 30R (CAT III), Amdt 8
St. Louis, MO, Lambert-St. Louis Intl, LDA/DME RWY 30L, Amdt 2C, CANCELLED
St. Louis, MO, Lambert-St. Louis Intl, Takeoff Minimums and Textual DP, Orig
St. Louis, MO, Spirit of St. Louis, Takeoff Minimums and Textual DP, Orig
Ruidoso, NM, Sierra Blanca Regional, ILS OR LOC/DME RWY 24, Orig
Ruidoso, NM, Sierra Blanca Regional, LOC/DME RWY 24, Orig-B, CANCELLED
Batavia, NY, Genesee County, ILS OR LOC RWY 28, Amdt 5
Buffalo, NY, Buffalo Niagara Intl, NDB RWY 23, Orig
Goldsboro, NC, Goldsboro-Wayne Muni, NDB RWY 23, Amdt 1, CANCELLED
Statesville, NC, Statesville Regional, GPS RWY 10, Amdt 1, CANCELLED
Statesville, NC, Statesville Regional, RNAV (GPS) RWY 10, Orig
Statesville, NC, Statesville Regional, VOR/DME RWY 10, Amdt 8
Statesville, NC, Statesville Regional, Takeoff Minimums and Textual Departures, Orig
Ardmore, OK, Ardmore Downtown Executive, NDB RWY 35, Amdt 5, CANCELLED
Eugene, OR, Mahlon Sweet Field, LOC/DME RWY 16L, Orig
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) RWY 9L, Amdt 1
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) RWY 9R, Amdt 2
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) Y RWY 9L, Orig, CANCELLED
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) Y RWY 9R, Amdt 1, CANCELLED
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) RWY 17, Amdt 1
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) Y RWY 17, Orig, CANCELLED
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) RWY 27L, Amdt 1
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) RWY 27R, Amdt 1
Orangeburg, SC, Orangeburg Muni, RNAV (GPS) RWY 5, Orig
Orangeburg, SC, Orangeburg Muni, RNAV (GPS) RWY 17, Orig
Orangeburg, SC, Orangeburg Muni, RNAV (GPS) RWY 23, Orig
Orangeburg, SC, Orangeburg Muni, RNAV (GPS) RWY 35, Orig
Orangeburg, SC, Orangeburg Muni, NDB RWY 5, Amdt 1
Orangeburg, SC, Orangeburg Muni, VOR RWY 5, Amdt 4C, CANCELLED
Houston, TX, William P. Hobby, ILS OR LOC RWY 4, ILS RWY 4 (CAT II), ILS RWY 4 (CAT III), Amdt 40

The FAA published an Amendment in Docket No. 30452; Amdt No. 3128 to Part 97 of the Federal Aviation Regulations (Vol. 70, FR No. 155, page 47092, dated August 12, 2005) Under section 97.27 effective for 1 Sep 2005 which is hereby rescinding the Cancellation in its entirety:

Boise, ID, Boise Air Terminal (Gowen Field), NDB RWY 10R, Amdt 27A, CANCELLED

[FR Doc. 05–18376 Filed 9–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 736, 738, 742, 744, and 748

[Docket No. 050803216–5216–01]

RIN 0694–AD30

Revisions and Clarifications to the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by deleting a redundant paragraph and redesignating the remaining paragraphs in one section for clarity; inserting material inadvertently omitted from previous rules in three places in the EAR; clarifying instructions for applying for authorization to transfer items subject to the EAR in-country; adding an alias for a previously listed entity on the Entity List; and removing references to two Export Control Classification Numbers (ECCNs) that do not exist. The purpose of these amendments is to make corrections and clarifications to the EAR so the public will find them easier to use.

DATES: This rule is effective September 16, 2005.

ADDRESSES: Although this is a final rule, comments are welcome and should be sent to *publiccomments@bis.doc.gov,* fax (202) 482–3355, or to Regulatory Policy Division, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, Washington, DC 20230. Please refer to regulatory identification number (RIN) 0694–AD30 in all comments, and in the subject line of e-mail comments.

FOR FURTHER INFORMATION CONTACT: Timothy Mooney, Office of Exporter Services, Bureau of Industry and Security, Telephone: (202) 482–2440, E-mail: *tmooney@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

This rule makes the following corrections and clarifications:

1. A redundant paragraph is deleted in Supplement No. 2 to part 736 of the EAR, which sets forth the Administrative Orders of the Bureau of Industry and Security (BIS). Prior to the publication of this rule, Administrative Order Two contained a paragraph designated as (a), the introductory text of which merely repeated the title of the order. The order contained no paragraph designated as (b). This rule removes the introductory text of paragraph (a) and redesignates all subsequent paragraphs accordingly.

2. In paragraph 738.2(d)(2)(i)(A), an omission is corrected by adding ''UN United Nations Embargo'' in alphabetical order to the list of all possible Reasons for Control. That phrase was previously inadvertently omitted.

3. In paragraph 738.4(b)(3) (Sample analysis), a typographical error is fixed in the third sentence by inserting the preposition ''of'' into the phrase discussing nuclear nonproliferation controls. The phrase ''I understand that though nuclear nonproliferation controls apply to a portion the entry * * *'' now reads ''I understand that though nuclear nonproliferation controls apply to a portion of the entry * * *''.

4. In Section 742.19, references to ECCNs 2B994 and 2C994, which do not exist, are removed, and references to ECCNs 2D994 and 2E994 are added. In June 2000, the EAR were amended to reduce export and reexport controls to North Korea (65 FR 38148, June 19, 2000). Prior to publication of that rule, almost all exports and reexports to North Korea of items subject to the EAR required a license. Although that rule reduced license requirements to North Korea overall, it retained license requirements for most items controlled on the Commerce Control List (CCL). These license requirements were enumerated in a newly created Section 742.19 and included all items on the CCL except those items controlled under ECCNs 0A988 and 0A989. This was clarified as including all items controlled for Anti-Terrorism (AT) reasons, including any item on the CCL containing AT column 1 or AT column 2 in the Country Chart column of the

License Requirements section of an ECCN, as well as numerous specifically identified ECCNs which were controlled for AT reasons but which did not make reference to the Country Chart. When listing the ECCNs of items controlled for AT reasons but which did not make reference to the Country Chart, the rule mistakenly listed ECCNs 2B994 and 2C994, which did not then (and still do not) exist. In addition, the rule neglected to specifically mention ECCNs 2D994 and 2E994, both of which were controlled for AT reasons but did not reference the Country Chart. This rule corrects that error by replacing the references in paragraph 742.19(a)(1) to 2B994 and 2C994 with references to 2D994 and 2E994.

5. Supplement No. 4 to part 744 (Entity List) is amended by revising the entry for the Beijing University of Aeronautics and Astronautics (BUAA) by adding an alias, Beihang University. This alias is being added because the Chinese name for BUAA is sometimes translated into English as Beihang University. The Entity List now notifies the public that a license is required for the export or reexport of all items subject to the EAR to the ''Beijing University of Aeronautics and Astronautics (BUAA), a.k.a. Beihang University''.

6. In section 748.8 (Unique Application and Submission Requirements), this rule adds instructions on how to apply for authorization to transfer items subject to the EAR in-country using the BIS Multipurpose Application (Form 748–P) and its electronic equivalent in the Simplified Network Application Process (SNAP). This rule adds paragraph ''(v) In-country transfers'' to section 748.8 and adds specific instructions for filling out applications for in-country transfers in Supplement No. 2 to part 748 (Unique Application and Submission Requirements). These application instructions will insure that applications for in-country transfer authorization are filled out correctly, and will also clarify for the public that a temporary license application process created in 2004 is no longer necessary and should no longer be used due to improvements in BIS software. The history of the application process for in-country transfer authorization is explained in more detail below.

In July 2004, the EAR were amended when licensing responsibility for exports and reexports to Iraq of items subject to the EAR reverted from the Department of the Treasury to the Department of Commerce (69 FR 46077, July 30, 2004). These amendments created a new requirement for authorization to make certain in-country transfers in Iraq. Because of an inability at that time to modify the BIS software that processes and tracks license application data submitted through the Multipurpose Application, BIS created a unique process to apply for authorization to transfer items in-country, which did not require use of either BIS Form 748–P or its electronic equivalent, but required the applicant to submit a letter request to BIS. That process was explained in guidance published on the BIS Web site. Since July 2004, additional requirements for in-country transfer authorization have been issued, specifically in sections 744.3 and 744.4 of the EAR.

From November 17, 2004 to June 17, 2005, BIS received 209 applications for in-country transfer authorization under section 746.3 and part 744 of the EAR, and pursuant to conditions that had been placed on licenses issued by BIS. Only one of these applications was submitted according to the letter process set up in July 2004, and the rest were submitted using BIS Form 748–P. To improve the handling of these applications, BIS updated its software, which can now more effectively process and track in-country transfer application data received from the Multipurpose Application. With this improved software, BIS is now eliminating the letter application process created in July 2004, and is instead requiring all in-country transfer authorization applications to be submitted using BIS Form 748–P or its electronic equivalent. This new process will apply to applications to make in-country transfers under the EAR, including under sections 744.3, 744.4, 744.6, 744.18 and 746.3 of the EAR, and pursuant to conditions imposed on licenses issued under the EAR.

Despite the progress that has been made updating BIS software, it still has not been modified to process and track data provided through fields that are not currently available on the BIS Form 748–P and its electronic equivalent. Therefore, as an interim measure, BIS requires an applicant for in-country transfer authorization to designate its proposed transaction as a ''reexport'' in Box 5 of the BIS 748–P or its electronic equivalent, which will allow BIS software to process and track information regarding both an original ultimate consignee and a new ultimate consignee related to the transaction. This rule also instructs the applicant to enter ''in-country transfer'' in Box 9 of BIS 748–P or its electronic equivalent, which will allow BIS software to recognize that the application is for in-country transfer authorization, rather than reexport authorization. Further, the applicant is directed by this rule to state the same foreign country for both the original ultimate consignee and the new ultimate consignee.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 2, 2005, 70 FR 45273 (August 5, 2005), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6883, Washington, DC 20230.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Department finds that there is good cause under 5 U.S.C. 553(b)(3) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because it is unnecessary. This regulation deletes a redundant paragraph and redesignates the remaining paragraphs in one section for clarity; inserts material inadvertently omitted from previous rules in three places in the EAR; clarifies instructions for applying for authorization to transfer items subject to the EAR in-country; adds an alias for a listed entity on the

Entity List; and removes references to two ECCNs that do not exist. The revisions made by this rule are administrative in nature and do not affect the rights and obligations of the public. Because these revisions are not substantive changes to the EAR, it is unnecessary to provide notice and opportunity for public comment. In addition, the 30-day delay in effectiveness required by U.S.C. 553(d) is not applicable because this rule is not a substantive rule. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Because notice of proposed rulemaking and opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable.

List of Subjects

15 CFR Parts 736 and 738

Exports.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

■ Accordingly, parts 736, 738, 742, 744, and 748 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 736—[AMENDED]

■ 1. The authority citation for part 736 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 (note), Pub. L. 108–175; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of November 4, 2004, 69 FR 64637, 3 CFR, 2004 Comp., p. 303; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 2. Supplement No. 2 to part 736, is amended in ''Administrative Order Two'' by:

■ a. Removing the introductory text of paragraph (a);

■ b. By redesignating paragraph (a)(1) as paragraph (a) introductory text and by redesignating paragraph (a)(2) as paragraph (b);

■ c. By redesignating paragraphs (a)(1)(i) and (a)(1)(ii) as paragraphs (a)(1) and (a)(2);

■ d. By redesignating paragraph (a)(1)(iii) as paragraph (a)(3); and

■ e. By redesignating paragraph (a)(1)(iv) as paragraph (a)(4).

PART 738—[AMENDED]

■ 3. The authority citation for part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

§ 738.2 [Amended]

■ 4. Section 738.2 paragraph (d)(2)(i)(A), is amended by adding in alphabetical order ''UN United Nations Embargo'' to the list of all possible Reasons for Control.

§ 738.4 [Amended]

■ 5. Section 738.4 paragraph (b)(3) is amended by revising the phrase in the third sentence, '' I understand that though nuclear nonproliferation controls apply to a portion the entry'' to read ''I understand that though nuclear nonproliferation controls apply to a portion of the entry''.

PART 742—[AMENDED]

■ 6. The authority citation for part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; Sec 1503, Pub. L. 108–11,117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, 3 CFR, 2003 Comp., p. 320; Notice of November 4, 2004, 69 FR 64637, 3 CFR, 2004 Comp., p. 303; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 7. Section 742.19 is amended by revising the second sentence of paragraph (a)(1), to read as follows:

§ 742.19 Anti-terrorism: North Korea.

(a) License requirements.

(1) * * * This includes all items controlled for AT reasons, including any item on the CCL containing AT column 1 or AT column 2 in the Country Chart column of the License Requirements section of an ECCN; and ECCNs 0A986, 0A999, 0B986, 0B999, 0D999, 1A999, 1B999, 1C995, 1C999, 1D999, 2A994, 2A999, 2B999, 2D994, 2E994, 3A999, and 6A999.

* * * * *

PART 744—[AMENDED]

■ 8. The authority citation for part 744 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of November 4, 2004, 69 FR 64637, 3 CFR, 2004 Comp., p. 303; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 9. Supplement No. 4 to part 744 is amended by revising under the Country, ''China, People's Republic of'' the entry for ''Beijing University of Aeronautics and Astronautics (BUAA)'', to read as follows.

SUPPLEMENT NO. 4 TO PART 744.—ENTITY LIST

Country	Entity	License requirement	License review policy	Federal Register citation
*	*	*	*	*
China, People's Republic of.	Beijing University of Aeronautics and Astronautics (BUAA), a.k.a. Beihang University.	For all items subject to the EAR.	See § 744.3(d) of this part.	66 FR 24266 5/14/01 70 FR [Insert FR Page Number] 9/16/05.
*	*	*	*	*

PART 748—[AMENDED]

■ 10. The authority citation for part 748 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 11. Section 748.8 is amended by adding new paragraph (v), to read as follows:

§ 748.8 Unique application and submission requirements.

* * * * *

(v) *In-country transfers.*

■ 12. Supplement No. 2 to part 748 is amended by adding new paragraph (v), to read as follows:

Supplement No. 2 to Part 748—Unique Application and Submission Requirements

* * * * *

(v) *In-country transfers.* To request an in-country transfer, you must specify ''in-country transfer'' in Block 9 (Special Purpose) and mark ''Reexport'' in Block 5 (Type of Application) of the BIS–748P ''Multipurpose Application'' form. The application also must specify the same foreign country for both the original ultimate consignee and the new ultimate consignee.

Dated: September 9, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 05–18373 Filed 9–15–05; 8:45 am]

BILLING CODE 3510–33–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release Nos. 34–52407; IA–2426; File No. S7–25–99]

RIN 3235–AH78

Certain Broker-Dealers Deemed Not To Be Investment Advisers, Extension of Compliance Date

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of compliance date.

SUMMARY: The Securities and Exchange Commission is extending the compliance date for the rule that identifies circumstances under which a broker-dealer's advice is not ''solely incidental to'' its brokerage business or to brokerage services provided to certain accounts and thus subjects the broker-dealer to the Investment Advisers Act of 1940.

DATES: The effective date for § 275.202(a)(11)–1, issued on April 12, 2005 (70 FR 20424, Apr. 19, 2005), remains April 15, 2005 (except for § 275.202(a)(11)–1(a)(1)(ii), which was effective May 23, 2005). Effective on September 19, 2005, the compliance date for § 275.202(a)(11)–1(b)(2) and § 275.202(a)(11)–1(b)(3) is extended from October 24, 2005 to January 31, 2006.

FOR FURTHER INFORMATION CONTACT: Catherine E. Marshall, Senior Counsel, or Nancy M. Morris, Attorney-Fellow, at (202–551–6787), or *Iarules@sec.gov,* Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: On April 12, 2005, the Securities and Exchange Commission (''Commission'') issued its release adopting rule 202(a)(11)–1 under the Investment Advisers Act of 1940 (''Advisers Act'') regarding the application of the Advisers Act to certain broker-dealers. Paragraph (b)(2) of the rule provides that when a broker-dealer provides advice as part of a financial plan or in connection with providing financial planning services, a broker-dealer provides investment advice that is not ''solely incidental to'' (a) the business of a broker or dealer within the meaning of the Advisers Act or (b) brokerage services within the meaning of the rule if it: (i) Holds itself out to the public as a financial planner or as providing financial planning services; or (ii) delivers to its customer a financial plan; or (iii) represents to the customer that the advice is provided as part of a financial plan or in connection with financial planning services. Paragraph (b)(3) provides that exercising investment discretion is not ''solely incidental to'' (a) the business of a broker or dealer within the meaning of the Advisers Act or (b) brokerage services within the meaning of the rule (except for investment discretion granted by a customer on a temporary or limited basis).

The American Council of Life Insurers (''ACLI''), the Securities Industry Association (''SIA'') and the Financial Services Institute (''FSI'') each filed a petition for rulemaking under rule 192 of our Rules of Practice seeking an extension of certain compliance dates in rule 202(a)(11)–1.[1] The ACLI expressed

[1] American Council of Life Insurers, *Petition for Rulemaking Under Rule 192 of the SEC's Rules of Practice Concerning Extended Implementation Date in Rule 202(a)(11)–1(b)(2) Under the Investment Advisers Act of 1940,* July 27, 2005, File No. 4–507 (available at: *http://www.sec.gov/rules/petitions/4–507a.pdf*) (The ACLI is seeking an extension of the compliance date for rule 202(a)(11)–1(b)(2) until April 24, 2006.); Securities Industry Association, *Petition for Rulemaking; Request for Extension of Certain Compliance Dates for Rule 202(a)(11)–1 (S7–25–99),* July 28, 2005, File No. 4–507 (available at: *http://www.sec.gov/rules/petitions/petn4–507.pdf*) (The SIA is seeking an extension of compliance dates for rule 202(a)(11)–1(b)(2) and (b)(3) until April 1, 2006.); Securities Industry Association, *Request for Extension of Certain Compliance Dates for Rule 202(a)(11)–1 (S7–25–99),* August 25, 2005, File No. 4–507 (supplementing the SIA's petition for rulemaking) (available at: *http://www.sec.gov/rules/petitions/4–507b.pdf*); Financial

Continued

concerns about its members' ability to fulfill the enterprise-wide transformation necessary to comply with the financial planning provision of rule 202(a)(11)–1(b)(2) by the October 24, 2005, compliance date. The SIA and the FSI expressed concerns about their members' ability to comply with the financial planning and investment discretion provisions of rule 202(a)(11)–1(b)(2) and (b)(3) by the October 24, 2005, compliance date. All three organizations state that, to comply with the rule, many of their members face requirements that will make it difficult to complete their compliance efforts by the October compliance date.

Specifically, with respect to subparagraph (b)(2), the ACLI and the SIA note that, among other things, the detailed personnel training and system enhancements (which need to be coded and tested) required by the rule will add to compliance complexities. The ACLI states, for example, that its members need time to ascertain the application of the rule to their activities, train their employees to fulfill their Advisers Act obligations, and license their employees as investment adviser representatives under state law. The SIA and the FSI state that their member firms need time to make judgments about their activities, products and services that are, and are not, subject to the Advisers Act and to develop and disseminate meaningful disclosures about brokerage and advisory relationships which, they state, will require substantial computer programming changes.

With respect to subparagraph (b)(3), the SIA and the FSI state that broker-dealers must evaluate each account currently classified as ''discretionary'' to determine whether it is discretionary within the meaning of the rule, to discuss with each affected client the investment options available for each account and to provide those clients with time to choose whether they want to maintain their accounts as non-discretionary brokerage accounts or investment discretion advisory accounts. According to the SIA, the volume of accounts, coupled with associated recordkeeping requirements and time spent waiting for customer responses, will cause the process to take a longer time to complete than currently permitted by the rule. In this regard, the SIA notes that this process will be labor intensive and time-consuming and will involve functions other than merely categorizing accounts. For example, for those clients who elect to have their accounts be advisory accounts, the SIA states that the broker-dealers will need time to create and finalize advisory agreements, prepare ADV filings and related adviser disclosures, adopt internal policies and procedures, and implement internal system infrastructure and trade processing so that the accounts comply with the Advisers Act. For accounts that will become non-discretionary brokerage accounts, the SIA states that its members likewise will need to consult with clients about the clients' options, document the new brokerage services, and develop systems to document that the account is a non-discretionary brokerage account. Further complicating the compliance process, according to the SIA, due to year-end reporting requirements, many member firms ''black-out'' their systems to changes from late-November through the end of the year. Finally, the SIA states that some broker-dealers who provide services that will be deemed to be investment advice under the rule are not currently registered as investment advisers and will need time to register as advisers and comply with the Advisers Act. The FSI similarly states that its members need additional time to review accounts and to consult with their clients about the clients' options and choices.

The ACLI, the SIA, and the FSI thus seek an extension of the compliance date so that their members have more time to take the actions necessary to bring them into compliance with the rule.

We have received three letters in opposition to the rulemaking petitions filed by the ACLI and the SIA. We have not received any letters that directly oppose the FSI's rulemaking petition.

The Investment Adviser Association (''IAA'') filed a letter in opposition to the SIA's petition to extend the compliance date for paragraph (b)(3) of rule 202(a)(11)–1 concerning investment discretion advisory accounts.[2] The Consumer Federation of America, Fund Democracy, Consumer Action, and Consumers Union (collectively, ''CFA'') and Joseph Capital Management, LLC (''JCM'') each filed a letter in opposition to the ACLI's and the SIA's petitions to extend the compliance dates for the financial planning and investment discretion provisions of rule 202(a)(11)–1.[3]

The IAA and CFA assert that determining whether a broker-dealer exercises investment discretion over an account is neither difficult nor time-consuming and that the SIA never indicated in its comment letter to this rulemaking that this determination would be difficult or time consuming. In a similar vein, JCM asserts that the final rule was ''liberal'' in the time constraints originally imposed and that the petitioners have not adequately justified their extension requests. The IAA and the CFA further assert that the SIA and its members have long been aware that the final rule would require broker-dealers to treat investment discretion accounts as advisory accounts. With respect to financial planning, while the CFA acknowledges that ''brokers and insurance agents will be required to undertake a significant effort to come into compliance with the rule in the allotted time,'' the CFA further states that investor protection concerns ''justify that effort.'' JCM challenges the SIA's assertion that its members will be required to develop and disseminate disclosure once they determine whether a given activity is financial planning within the meaning of the rule. JCM asserts that financial planning activities have always triggered application of the Advisers Act.[4] According to JCM, the SIA's and ACLI's requests thus are inconsistent with our emphasis on compliance with the federal securities laws.

The Commission is persuaded that extending the compliance date for rule 202(a)(11)–1(b)(2) and (b)(3) for a short period of time is appropriate. While we have concerns about the effect of the

Services Institute Inc., *Request for Extension of Compliance Dates for Certain Aspects of Rule 202(a)(11)–1 (S7–25–99),* Aug. 25, 2005, File No. 4–507 (available at: *http://www.sec.gov/rules/petitions/4–507c.pdf*) (The FSI is seeking an extension of the compliance dates for rule 202(a)(11)–1(b)(2) and (b)(3) until April 24, 2006.) Although the FSI did not expressly petition for rulemaking, we so construe its extension request.

[2] Letter of Investment Adviser Association to Jonathan G. Katz (Aug. 4, 2005), File No. 4–507 (available at: *http://www.sec.gov/rules/petitions/4–507/dgtittsworth080405.pdf*).

[3] Letter from Barbara Roper, Director of Investor Protection, Consumer Federation of America; Mercer Bullard, Founder and President, Fund Democracy; Kenneth McEldowney, Executive Director, Consumer Action; and Sally Greenberg, Senior Counsel, Consumers Union, to Jonathan G. Katz, Secretary, Commission (Aug. 11, 2005), File No. 4–507 (available at: *http://www.sec.gov/rules/petitions/4–507/4507–2.pdf*); Letter from Ron A. Rhoades, Chief Compliance Officer, Joseph Capital Management, LLC, to Jonathan G. Katz, Secretary, Commission (Aug. 18, 2005), File No. 4–507 (available at: *http://www.sec.gov/rules/petitions/4–507/4507–3.pdf*).

[4] JCM cites our staff's interpretive release on financial planning. Applicability of the Investment Advisers Act to Financial Planners, Pension Consultants, and Other Persons Who Provide Investment Advisory Services as a Component of Other Financial Services, Investment Advisers Act Release No. 1092 (Oct. 8, 1987) [52 FR 38400 (Oct. 16, 1987)]. We note, however, that the release expressly contemplated that, under appropriate circumstances, broker-dealers who provide financial planning services may have been able to avail themselves of the statutory exception set out in section 202(a)(11)(C).

extension in delaying the anticipated benefits of the rule, in our judgment a limited extension of the compliance date is, on balance, appropriate. Our judgment is based on the representations made by the SIA, the ACLI, and the FSI (whose members are required to comply with the rule and thus are in a position to assess the level of difficulty and time involved in their complying with the rule) and our experience in overseeing the industry. We are not, however, persuaded that a delay of up to an additional six months is necessary given that we already afforded broker-dealers approximately a six-month compliance period, and that these provisions will provide investors with important protections.[5] Accordingly, the Commission believes it is appropriate to extend the compliance date for rule 202(a)(11)–1(b)(2) and (b)(3) until January 31, 2006. The rule's effective date of April 15, 2005 remains unchanged.

The Commission for good cause finds that, for the reasons cited above, including the brief length of the extension we are granting, notice and solicitation of comment regarding the extension of the compliance date for rule 202(a)(11)–1(b)(2) and (b)(3) are impracticable, unnecessary, or contrary to the public interest.[6] In this regard, the Commission notes that broker-dealers need to be informed as soon as possible of the extension and its length in order to plan and adjust their implementation processes accordingly.

Dated: September 12, 2005.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–18384 Filed 9–15–05; 8:45 am]

BILLING CODE 8010–01–P

[5] JCM asserts that providing the requested relief will exacerbate and extend investor confusion with respect to fee-based accounts. We disagree. Broker-dealers already are required to comply with the specific disclosure provisions of rule 202(a)(11)–1(a)(1)(ii).

[6] See section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) (''APA'') (an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are ''impracticable, unnecessary, or contrary to the public interest). The change to the compliance date is effective upon publication in the **Federal Register**, which is less than 30 days after publication. The APA allows effective dates less than 30 days after publication in the **Federal Register** for ''a substantive rule which grants or recognizes an exemption or relieves a restriction.'' *See* section 553(d)(1) of the APA.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9225]

RIN 1545–BD53

Corporate Reorganizations; Guidance on the Measurement of Continuity of Interest

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations that provide guidance regarding the satisfaction of the continuity of interest requirement for corporate reorganizations. The final regulations affect corporations and their shareholders.

DATES: *Effective Date:* These regulations are effective September 16, 2005.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Fienberg, at (202) 622–7770 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The Internal Revenue Code of 1986 (Code) provides for general nonrecognition treatment for reorganizations described in section 368 of the Code. In addition to complying with the statutory and certain other requirements, to qualify as a reorganization, a transaction generally must satisfy the continuity of interest (COI) requirement. COI requires that, in substance, a substantial part of the value of the proprietary interests in the target corporation be preserved in the reorganization.

On August 10, 2004, the IRS and Treasury Department published a notice of proposed rulemaking (REG–129706–04) in the **Federal Register** (69 FR 48429) (hereinafter the proposed regulations) identifying certain circumstances in which the determination of whether a proprietary interest in the target corporation is preserved would be made by reference to the value of the issuing corporation's stock on the day before there is an agreement to effect the potential reorganization. In particular, in cases in which the consideration to be tendered to the target corporation's shareholders is fixed in a binding contract and includes only stock of the issuing corporation and money, the issuing corporation stock to be exchanged for the proprietary interests in the target corporation would be valued as of the end of the last business day before the first date there is a binding contract to effect the potential reorganization (the signing date rule). Under the proposed regulations, consideration is fixed in a contract if the contract states the number of shares of the issuing corporation and the amount of money, if any, to be exchanged for the proprietary interests in the target corporation. The signing date rule is based on the principle that, in cases in which a binding contract provides for fixed consideration, the target corporation shareholders generally can be viewed as being subject to the economic fortunes of the issuing corporation as of the signing date.

No public hearing regarding the proposed regulations was requested or held. However, several written and electronic comments regarding the notice of proposed rulemaking were received. After consideration of the comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

These final regulations retain the general framework of the proposed regulations but make several modifications in response to the comments received. The following sections describe the most significant comments and the extent to which they have been incorporated into these final regulations.

A. Fixed Consideration

As stated above, the proposed regulations require that the consideration in a contract be fixed in order for the signing date rule to apply. One commentator identified a number of contractual arrangements that do not provide for fixed consideration within the meaning of the proposed regulations, but, nevertheless, are arrangements in which the consideration should be treated as fixed and, therefore, eligible for the signing date rule. In particular, the commentator identified a number of circumstances in which, rather than stating the number of shares and money to be exchanged for target corporation shares, a contract may provide that a certain percentage of target corporation shares will be exchanged for stock of the issuing corporation. One such circumstance is where a merger agreement permits the target corporation some flexibility in issuing its shares between the signing date and effective date of the potential reorganization. Such an issuance may occur, for example, upon the exercise of employee stock options. As a result, the total number of outstanding target corporation shares at the effective time

of the merger and, therefore, the total number of shares of the acquiring corporation to be issued in the merger, may not be known when the merger agreement is signed.

In addition, a contract may permit the target corporation shareholders to elect to receive stock (the number of shares of which may be determined pursuant to a collar) and/or money or other property in respect of target corporation stock, but provide that a particular percentage of target corporation shares will be exchanged for stock of the issuing corporation and a particular percentage of target corporation stock will be exchanged for money. In these cases, if either the stock or the cash consideration is oversubscribed, adjustments are made to the consideration to be tendered in respect of the target corporation shares such that the specified percentage of target corporation shares is, in fact, exchanged for stock of the issuing corporation.

The IRS and Treasury Department agree that a contract that provides for either the percentage of the number of shares of each class of target corporation stock, or the percentage by value of the target corporation shares, to be exchanged for issuing corporation stock should be treated as providing for fixed consideration, as long as the target corporation shares to be exchanged for issuing corporation stock and the target corporation shares to be exchanged for consideration other than issuing corporation stock each represents an economically reasonable exchange. Just as in cases in which the contract states the number of shares of the issuing corporation and the amount of money, if any, to be exchanged for the proprietary interests in the target corporation, in these cases, the target corporation shareholders generally can be viewed as being subject to the economic fortunes of the issuing corporation as of the signing date. Accordingly, these final regulations include an expanded set of circumstances in which a contract will be treated as providing for fixed consideration.

B. Contingent Consideration

The fact that a contract provides for contingent consideration will generally prevent a contract from being treated as providing for fixed consideration. One commentator suggested that a contract should not be treated as failing to provide for fixed consideration solely because it provides for contingent consideration that can only increase the proportion of issuing corporation stock to cash to be exchanged for target corporation shares. Where stock of the issuing corporation is the only type of consideration that is subject to a contingency, the delivery of any of the contingent consideration to the target corporation shareholders will enhance the preservation of the target corporation's shareholders' proprietary interests. Therefore, these final regulations provide for a limited exception to the general rule that an arrangement that provides for contingent consideration will not be one to which the signing date rule applies. The exception applies to cases in which the contingent consideration consists solely of stock of the issuing corporation and the execution of the potential reorganization would have resulted in the preservation of a substantial part of the value of the target corporation shareholders' proprietary interests in the target corporation if none of the contingent consideration were delivered to the target corporation shareholders.

The IRS and Treasury Department continue to study whether other arrangements involving contingent consideration should be within the scope of the signing date rule. Among these arrangements are cases in which the contingent consideration consists not only of issuing corporation stock but also of money or other property and cases in which the issuing corporation stock to be issued in respect of target corporation stock is determined pursuant to a collar.

C. Nature of Consideration

As described above, under the proposed regulations, the signing date rule applies only when the consideration to be provided in respect of target corporation shares includes only stock of the issuing corporation and money. One commentator suggested that the signing date rule should be expanded to apply to transactions in which the non-stock consideration includes property other than money. Under these final regulations, the signing date rule may apply in such cases. Therefore, under these final regulations, the signing date rule may apply, for example, in cases in which proprietary interests in the target corporation are exchanged for stock and securities of the issuing corporation.

D. Valuation

1. The ''As of the End of the Last Business Day'' Rule

The proposed regulations require that, if the signing date rule applies, the consideration to be tendered in respect of the target corporation shares surrendered be valued as of the end of the last business day before the first date there is a binding contract to effect the potential reorganization. One comment requested clarification of the meaning of as of the end of the last business day. That comment suggested that an average of the high and low trade price on that day should be an acceptable value for this purpose. Alternatively, the comment suggested that if a single trade were to determine the value of the issuing corporation stock, the closing price of the issuing corporation stock on the relevant market should be used. The comment further described an approach for identifying the relevant stock market.

In response to these comments, these final regulations remove the requirement that the consideration be valued as of the end of the last business day before the first date that there is a binding contract. Instead, they provide general guidance that the consideration to be exchanged for target corporation shares pursuant to a contract must be valued the day before such contract is a binding contract.

2. New Issuances

The IRS and Treasury Department recognize that the application of the requirement that the consideration to be exchanged for proprietary interests in the target corporation be valued on the last business day before the first date there is a binding contract to effect the potential reorganization may be unclear in cases in which the consideration does not exist prior to the effective date of the reorganization. For example, suppose that, in the potential reorganization, the issuing corporation will issue a new class of its stock in exchange for the shares of the target corporation. The question has arisen as to how to value those to be issued shares under the signing date rule, given that they do not exist on the last business day before the first date that there is a binding contract to effect the potential reorganization. Thus, these final regulations clarify that this new class of stock will be deemed to have been issued on the last business day before the first date there is a binding contract to effect the potential reorganization for purposes of applying the signing date rule.

E. Escrowed Stock

1. Pre-Closing Covenants

The proposed regulations provide that placing part of the stock issued or money paid into escrow to secure customary target representations and warranties will not prevent the consideration in a contract from being fixed. One comment suggested that this rule should be expanded to include

consideration placed in escrow to secure target's performance of customary pre-closing covenants (rather than representations and warranties). That commentator stated that there is no reason to distinguish between customary pre-closing covenants, on the one hand, and customary representations and warranties, on the other hand. The IRS and Treasury Department agree. Accordingly, these final regulations extend the rule related to escrows to include consideration placed in escrow to secure target's performance of customary pre-closing covenants.

2. Effect of Escrowed Consideration on Satisfaction of COI

Some commentators have indicated that certain examples in the proposed regulations suggest that escrowed stock, even if it is forfeited to the issuing corporation, is treated as preserving the target shareholders' proprietary interests in the target corporation. The IRS and Treasury Department believe that escrowed consideration that is forfeited should not be taken into account in determining whether the COI requirement is satisfied. This conclusion reflects the view that the forfeiture of escrowed consideration is in substance a purchase price adjustment. Accordingly, the examples in these final regulations reflect that forfeited stock is not treated as preserving the target corporation shareholders' proprietary interests in the target corporation and forfeited non-stock consideration is not treated as counting against the preservation of the target corporation's shareholders' proprietary interest in the target corporation. The IRS and Treasury Department continue to consider the effect on COI of escrowed consideration and contingent consideration.

3. Revenue Procedure 84–42

One commentator requested clarification regarding the impact of the proposed regulations on Revenue Procedure 84–42 (1984–1 C.B. 521). Rev. Proc. 84–42 includes certain operating rules of the IRS regarding the issuance of letter rulings, including the circumstances in which the placing of stock in escrow will not prevent the IRS from issuing a private letter ruling. The IRS and Treasury Department continue to review the existing revenue procedures relating to reorganizations in light of the numerous regulatory changes since the publication of these procedures and the policy against issuing rulings in the reorganization area unless there is a significant issue, which is reflected in Rev. Proc. 2005–3. Rev. Proc. 84–42 is not amended at this time.

F. Anti-Dilution Provisions

One comment suggested that consideration in a contract should not be treated as fixed unless the contract includes a customary anti-dilution provision. The commentator posited an example in which the absence of an anti-dilution clause and the occurrence of a stock split with respect to the stock of the issuing corporation prior to the effective date of a potential reorganization results in the value of the consideration received in respect of the target corporation shares being substantially different from its value on the day before the first date there is a binding contract.

The IRS and Treasury Department do not believe that the absence of a customary anti-dilution provision should necessarily preclude the application of the signing date rule as dilution may not, in fact, occur. However, the IRS and Treasury Department are concerned that application of the signing date rule is not appropriate if the contract does not contain an anti-dilution clause relating to the stock of the issuing corporation and the issuing corporation alters its capital structure between the first date there is an otherwise binding contract to effect the potential reorganization and the effective date of the potential reorganization in a manner that materially alters the economic arrangement of the parties to the binding contract. Accordingly, these final regulations provide that, in such cases, the consideration will not be treated as fixed.

G. Contract Modifications

The proposed regulations require that if a term of a binding contract that relates to the amount or type of consideration the target shareholders will receive in a potential reorganization is modified before the closing date of the potential reorganization, and the contract as modified is a binding contract, then the date of the modification shall be treated as the first date there is a binding contract. Thus, such a modification requires that the stock of the issuing corporation be valued as of the end of the last business day before the date of the modification in order to determine whether the transaction satisfies the COI requirement.

One commentator suggested that a contract should not be treated as being modified for this purpose if the modification has the sole effect of increasing the number of shares of the issuing corporation to be received by the target shareholders. The IRS and Treasury Department agree that, because such a modification only enhances the preservation of the target corporation's shareholders' proprietary interests, it is not appropriate to value the consideration to be provided to the target corporation shareholders as of the day before the date of the modification rather than as of the day before the date of the original contract, at least in cases in which the transaction would have satisfied the COI requirement under the signing date rule if there had been no modification. Therefore, these final regulations provide that a modification that has the sole effect of providing for the issuance of additional shares of issuing corporation stock to the target corporation shareholders will not be treated as a modification if the execution of the potential reorganization would have resulted in the preservation of a substantial part of the value of the target corporation shareholders' proprietary interest in the target corporation if there had been no modification. In such cases, the determination of whether a proprietary interest in the target corporation has been preserved is made by reference to the value of the consideration as of the last business day before the first date the contract was binding, not the last business day before the modification. The IRS and Treasury Department continue to consider whether this exception should be extended to certain cases in which the modification results in not only additional shares of the issuing corporation to be issued to target corporation shareholders, but also additional money or other property to be transferred to target corporation shareholders.

H. Application of Principle Illustrated by Examples

One commentator asked whether the principle that the COI requirement is satisfied where 40 percent of the target corporation stock is exchanged for stock in the issuing corporation that is illustrated in the examples of the proposed regulations (which relate to the application of the signing date rule) also applies in cases in which the signing date rule does not apply. The IRS and Treasury Department believe that this principle is equally applicable to cases in which the signing date rule does not apply as it is to cases in which the signing date rule does apply.

I. Restricted Stock

The IRS and Treasury Department are continuing to consider the appropriate treatment of restricted stock in the

determination of whether the COI requirement is satisfied.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Christopher M. Bass of the Office of the Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.368–1 is amended as follows:

■ 1. Paragraph (e)(1)(i) is amended as follows:

■ A. Removing the language ''(e)(3)'' and adding in its place ''(e)(4)'' wherever it appears.

■ B. Removing the language ''(e)(3)(i)(A)'' and adding ''(e)(4)(i)(A)'' in its place.

■ 2. Redesignating paragraphs (e)(2) through (e)(7) as (e)(3) through (e)(8), respectively.

■ 3. Adding a new paragraph (e)(2).

■ 4. In newly designated paragraphs (e)(3) through (e)(8), remove the language ''(e)(6)'' wherever it appears, and add the language ''(e)(7)'' in its place.

■ 5. In newly designated paragraphs (e)(3) through (e)(8), remove the language ''(e)(4)'' wherever it appears, and add the language ''(e)(5)'' in its place.

■ 6. In newly designated paragraphs (e)(3) through (e)(8), remove the language ''(e)(3)'' wherever it appears, and add the language ''(e)(4)'' in its place.

■ 7. In newly designated paragraphs (e)(3) through (e)(8), remove the language ''(e)(2)'' wherever it appears, and add the language ''(e)(3)'' in its place.

■ 8. In newly designated paragraph (e)(4)(ii)(B), remove the language ''(e)(3)(i)(A)'' wherever it appears, and add the language ''(e)(4)(i)(A)'' in its place.

■ 9. In newly designated paragraph (e)(7), *Example 1*, remove the language ''(e)(1) and (2)'' whenever it appears, and add the language ''(e)(1) and (3)'' in its place.

■ 10. In newly designated paragraph (e)(7), *Example 2*, make the following revisions:

■ A. Remove the language ''(e)(3)(i)(B)'' wherever it appears, and add the language (e)(4)(i)(B)'' in its place.

■ B. Remove the language ''(e)(3)(i)(A) and (ii)(B)'' wherever it appears, and add the language ''(e)(4)(i)(A) and (ii)(B)'' in its place.

■ 11. In newly designated paragraph (e)(7), *Example 3*, where the language ''(e)(1) and (2)'' wherever it appears, and add the language ''(e)(1) and (3)'' in its place.

■ 12. In newly designated paragraph (e)(7), *Example 4,* paragraph (iii), remove the language ''(e)(3)(i)(A) and (B)'' wherever it appears, and add the language ''(e)(4)(i)(A) and (B)'' in its place.

■ 13. In newly designated paragraph (e)(7), *Example 6,* remove the language ''(e)(3)(i)(A) and (B)'' wherever it appears, and add the language ''(e)(4)(i)(A) and (B)'' in its place.

■ 14. In newly designated paragraph (e)(7), *Example 8,* remove the language ''(e)(3)(i)(A)'' wherever it appears, and add the language ''(e)(4)(i)(A)'' in its place.

■ 15. Revising newly designated paragraph (e)(8).

The addition and revision read as follows:

§ 1.368–1 Purpose and scope of exception of reorganization exchanges.

* * * * *

(e) * * *

(2) *Measuring continuity of interest*—(i) *In general.* In determining whether a proprietary interest in the target corporation is preserved, the consideration to be exchanged for the proprietary interests in the target corporation pursuant to a contract to effect the potential reorganization shall be valued on the last business day before the first date such contract is a binding contract, if such contract provides for fixed consideration.

(ii) *Binding contract*—(A) *In general.* A binding contract is an instrument enforceable under applicable law against the parties to the instrument. The presence of a condition outside the control of the parties (including, for example, regulatory agency approval) shall not prevent an instrument from being a binding contract. Further, the fact that insubstantial terms remain to be negotiated by the parties to the contract, or that customary conditions remain to be satisfied, shall not prevent an instrument from being a binding contract.

(B) *Modifications*—(*1*) *In general.* If a term of a binding contract that relates to the amount or type of the consideration the target shareholders will receive in a potential reorganization is modified before the closing date of the potential reorganization, and the contract as modified is a binding contract, the date of the modification shall be treated as the first date there is a binding contract.

(*2*) *Exception.* Notwithstanding paragraph (e)(2)(ii)(B)(*1*) of this section, a modification of a term that relates to the amount or type of consideration the target shareholders will receive in a potential reorganization will not be treated as a modification for purposes of that provision if—

(*i*) That modification has the sole effect of providing for the issuance of additional shares of issuing corporation stock to the target corporation shareholders; and

(*ii*) The execution of the potential reorganization would have resulted in the preservation of a substantial part of the value of the target corporation shareholders' proprietary interest in the target corporation if there had been no modification.

(C) *Tender offers.* For purposes of this paragraph (e)(2), a tender offer that is subject to section 14(d) of the Securities and Exchange Act of 1934 [15 U.S.C. 78n(d)(1)] and Regulation 14D (17 CFR 240.14d–1 through 240.14d–101) and is not pursuant to a binding contract, is treated as a binding contract made on the date of its announcement, notwithstanding that it may be modified by the offeror or that it is not enforceable against the offerees. If a modification (not pursuant to a binding contract) of such a tender offer is subject to the provisions of Regulation 14d–6(c) (17 CFR 240.14d–6(c)) and relates to the amount or type of the consideration received in the tender offer, then the

date of the modification shall be treated as the first date there is a binding contract.

(iii) *Fixed consideration*—(A) *In general.* A contract provides for fixed consideration if it provides—

(*1*) The number of shares of each class of stock of the issuing corporation, the amount of money, and the other property (identified either by value or by specific description), if any, to be exchanged for all of the proprietary interests in the target corporation;

(*2*) The number of shares of each class of stock of the issuing corporation, the amount of money, and the other property (identified either by value or by specific description), if any, to be exchanged for each proprietary interest in the target corporation;

(*3*) The percentage of the number of shares of each class of proprietary interests in the target corporation, or the percentage (by value) of the proprietary interests in the target corporation, to be exchanged for stock of the issuing corporation, provided that the proprietary interests in the target corporation to be exchanged for stock of the issuing corporation and the proprietary interests in the target corporation to be exchanged for consideration other than stock of the issuing corporation each represents an economically reasonable exchange as of the last business day before the first date there is a binding contract to effect the potential reorganization; or

(*4*) The percentage of each proprietary interest in the target corporation to be exchanged for stock of the issuing corporation, provided that the portion of each proprietary interest in the target corporation to be exchanged for stock of the issuing corporation and the portion of each proprietary interest in the target corporation to be exchanged for consideration other than stock of the issuing corporation each represents an economically reasonable exchange as of the last business day before the first date there is a binding contract to effect the potential reorganization.

(B) *Shareholder elections*—(*1*) *In general.* A contract that is not described in paragraph (e)(2)(iii)(A) of this section and pursuant to which a target corporation shareholder has an election to receive stock and/or money and other property in respect of target corporation stock is treated as providing for fixed consideration if the contract provides—

(*i*) The minimum number of shares of each class of stock of the issuing corporation and the maximum amount of money and other property (identified either by value or by specific description) to be exchanged for all of the proprietary interests in the target corporation; or

(*ii*) The minimum percentage of the number of shares of each class of proprietary interests in the target corporation, or the minimum percentage (by value) of the proprietary interests in the target corporation, to be exchanged for stock of the issuing corporation, provided that the proprietary interests in the target corporation to be exchanged for stock of the issuing corporation and the proprietary interests in the target corporation to be exchanged for consideration other than stock of the issuing corporation each represents an economically reasonable exchange as of the last business day before the first date there is a binding contract to effect the potential reorganization.

(*2*) *Special rules.* (*i*) In the case of a shareholder election described in paragraph (e)(2)(iii)(B)(*1*)(*i*) of this section, the determination of whether a proprietary interest in the target corporation is preserved shall be made by assuming the issuance by the issuing corporation of the minimum number of shares of each class of stock of the issuing corporation and the maximum amount of money and other property allowable under the contract and without regard to the number of shares of each class of stock of the issuing corporation and the amount of money and other property actually exchanged thereafter for proprietary interests in the target corporation.

(*ii*) In the case of a shareholder election described in paragraph (e)(2)(iii)(B)(*1*)(*ii*) of this section, the determination of whether a proprietary interest in the target corporation is preserved shall be made by assuming the issuance of issuing corporation stock in exchange for the minimum percentage of the number of shares of each class of proprietary interests in the target corporation, or the minimum percentage (by value) of proprietary interests in the target corporation, as the case may be, to be exchanged for stock of the issuing corporation allowable under the contract and without regard to the percentage of the number of shares of each class of proprietary interests in the target corporation, or the percentage (by value) of proprietary interests in the target corporation, actually exchanged for stock of the issuing corporation.

(C) *Contingent consideration*—(*1*) *In general.* In general, the fact that a contract provides for contingent consideration will prevent a contract from being treated as providing for fixed consideration. However, a contract will not fail to be treated as providing for fixed consideration solely as a result of a provision that provides for contingent consideration, if—

(*i*) The contingent consideration consists solely of stock of the issuing corporation; and

(*ii*) The execution of the potential reorganization would have resulted in the preservation of a substantial part of the value of the target corporation shareholders' proprietary interests in the target corporation if none of the contingent consideration were delivered to the target corporation shareholders.

(*2*) *Exception for escrows.* For purposes of paragraph (e)(2)(iii)(C)(*1*) of this section, contingent consideration does not include consideration paid in escrow to secure target's performance of customary pre-closing covenants or customary target representations and warranties.

(D) *Escrows.* Placing part of the consideration to be exchanged for proprietary interests in the target corporation in escrow to secure target's performance of customary pre-closing covenants or customary target representations and warranties will not prevent a contract from being treated as providing for fixed consideration.

(E) *Anti-dilution clauses.* The presence of a customary anti-dilution clause will not prevent a contract from being treated as providing for fixed consideration. However, the absence of such a clause will prevent a contract from being treated as providing for fixed consideration if the issuing corporation alters its capital structure between the first date there is an otherwise binding contract to effect the potential reorganization and the effective date of the potential reorganization in a manner that materially alters the economic arrangement of the parties to the binding contract.

(F) *Dissenters' rights.* The possibility that some shareholders may exercise dissenters' rights and receive consideration other than that provided for in the binding contract will not prevent the contract from being treated as providing for fixed consideration.

(G) *Fractional shares.* The fact that money may be paid in lieu of issuing fractional shares will not prevent a contract from being treated as providing for fixed consideration.

(iv) *Valuation of new issuances.* For purposes of applying paragraph (e)(2)(i) of this section, any class of stock, securities, or indebtedness that the issuing corporation issues to the target corporation shareholders pursuant to the potential reorganization and that does not exist before the first date there is a binding contract to effect the potential reorganization is deemed to have been issued on the last business

day before the first date there is a binding contract to effect the potential reorganization.

(v) *Examples.* For purposes of the examples in this paragraph (e)(2)(v), P is the issuing corporation, T is the target corporation, S is a wholly owned subsidiary of P, all corporations have only one class of stock outstanding, A is an individual, no transactions other than those described occur, and the transactions are not otherwise subject to recharacterization. The following examples illustrate the application of this paragraph (e)(2):

Example 1. Application of signing date rule. On January 3 of Year 1, P and T sign a binding contract pursuant to which T will be merged with and into P on June 1 of Year 1. Pursuant to the contract, the T shareholders will receive 40 P shares and $60 of cash in exchange for all of the outstanding stock of T. Twenty of the P shares, however, will be placed in escrow to secure customary target representations and warranties. The P stock is listed on an established market. On January 2 of Year 1, the value of the P stock is $1 per share. On June 1 of Year 1, T merges with and into P pursuant to the terms of the contract. On that date, the value of the P stock is $.25 per share. None of the stock placed in escrow is returned to P. Because the contract provides for the number of shares of P and the amount of money to be exchanged for all of the proprietary interests in T, under paragraph (e)(2) of this section, there is a binding contract providing for fixed consideration as of January 3 of Year 1. Therefore, whether the transaction satisfies the continuity of interest requirement is determined by reference to the value of the P stock on January 2 of Year 1. Because, for continuity of interest purposes, the T stock is exchanged for $40 of P stock and $60 of cash, the transaction preserves a substantial part of the value of the proprietary interest in T. Therefore, the transaction satisfies the continuity of interest requirement.

Example 2. Treatment of forfeited escrowed stock. (i) The facts are the same as in *Example 1* except that T's breach of a representation results in the escrowed consideration being returned to P. Because the contract provides for the number of shares of P and the amount of money to be exchanged for all of the proprietary interests in T, under paragraph (e)(2) of this section, there is a binding contract providing for fixed consideration as of January 3 of Year 1. Therefore, whether the transaction satisfies the continuity of interest requirement is determined by reference to the value of the P stock on January 2 of Year 1. Because, for continuity of interest purposes, the T stock is exchanged for $20 of P stock and $60 of cash, the transaction does not preserve a substantial part of the value of the proprietary interest in T. Therefore, the transaction does not satisfy the continuity of interest requirement.

(ii) The facts are the same as in *Example 2* (i) except that the consideration placed in escrow consists solely of eight of the P shares and $12 of the cash. Because the contract provides for the number of shares of P and the amount of money to be exchanged for all of the proprietary interests in T, under paragraph (e)(2) of this section, there is a binding contract providing for fixed consideration as of January 3 of Year 1. Therefore, whether the transaction satisfies the continuity of interest requirement is determined by reference to the value of the P stock on January 2 of Year 1. Because, for continuity of interest purposes, the T stock is exchanged for $32 of P stock and $48 of cash, the transaction preserves a substantial part of the value of the proprietary interest in T. Therefore, the transaction satisfies the continuity of interest requirement.

Example 3. Redemption of stock received pursuant to binding contract. The facts are the same as in *Example 1* except that A owns 50 percent of the outstanding stock of T immediately prior to the merger and receives 10 P shares and $30 in the merger and an additional 10 P shares upon the release of the stock placed in escrow. In connection with the merger, A and S agree that, immediately after the merger, S will purchase any P shares that A acquires in the merger for $1 per share. Shortly after the merger, S purchases A's P shares for $20. Because the contract provides for the number of shares of P and the amount of money to be exchanged for all of the proprietary interests in T, under paragraph (e)(2) of this section, there is a binding contract providing for fixed consideration as of January 3 of Year 1. Therefore, whether the transaction satisfies the continuity of interest requirement is determined by reference to the value of the P stock on January 2 of Year 1. In addition, S is a person related to P under paragraph (e)(4)(i)(A) of this section. Accordingly, A is treated as exchanging his T shares for $50. Because, for continuity of interest purposes, the T stock is exchanged for $20 of P stock and $80 of cash, the transaction does not preserve a substantial part of the value of the proprietary interest in T. Therefore, the transaction does not satisfy the continuity of interest requirement.

Example 4. Modification of binding contract—continuity not preserved. The facts are the same as in *Example 1* except that on April 1 of Year 1, the parties modify their contract. Pursuant to the modified contract, which is a binding contract, the T shareholders will receive 50 P shares (an additional 10 shares) and $75 of cash (an additional $15 of cash) in exchange for all of the outstanding T stock. On March 31 of Year 1, the value of the P stock is $.50 per share. Under paragraph (e)(2) of this section, although there was a binding contract providing for fixed consideration as of January 3 of Year 1, terms of that contract relating to the consideration to be provided to the target shareholders were modified on April 1 of Year 1. Because the modified contract provides for the number of P shares and the amount of money to be exchanged for all of the proprietary interests in T, under paragraph (e)(2) of this section, the modified contract is a binding contract providing for fixed consideration as of April 1 of Year 1. Therefore, whether the transaction satisfies the continuity of interest requirement is determined by reference to the value of the P stock on March 31 of Year 1. Because, for continuity of interest purposes, the T stock is exchanged for $25 of P stock and $75 of cash, the transaction does not preserve a substantial part of the value of the proprietary interest in T. Therefore, the transaction does not satisfy the continuity of interest requirement.

Example 5. Modification of binding contract disregarded—continuity preserved. The facts are the same as in *Example 4* except that, pursuant to the modified contract, which is a binding contract, the T shareholders will receive 60 P shares (an additional 20 shares as compared to the original contract) and $60 of cash in exchange for all of the outstanding T stock. In addition, on March 31 of Year 1, the value of the P stock is $.40 per share. Under paragraph (e)(2) of this section, although there was a binding contract providing for fixed consideration as of January 3 of Year 1, terms of that contract relating to the consideration to be provided to the target shareholders were modified on April 1 of Year 1. Nonetheless, the modification has the sole effect of providing for the issuance of additional P shares to the T shareholders. In addition, the execution of the terms of the contract without regard to the modification would have resulted in the preservation of a substantial part of the value of the T shareholders' proprietary interest in T because, for continuity of interest purposes, the T stock would have been exchanged for $40 of P stock and $60 of cash. Therefore, the modification is not treated as a modification under paragraph (e)(2) of this section. Accordingly, whether the transaction satisfies the continuity of interest requirement is determined by reference to the value of the P stock on January 2 of Year 1. Despite the modification, the transaction continues to satisfy the continuity of interest requirement.

Example 6. New issuance. The facts are the same as in *Example 1,* except that, in lieu of the $60 of cash, the T shareholders will receive a new class of P securities that will be publicly traded. In the aggregate, the securities will have a stated principal amount of $60 and bear interest at the average LIBOR (London Interbank Offered Rates) during the 10 days prior to the potential reorganization. If the T shareholders had been issued the P securities on January 2 of Year 1, the P securities would have had a value of $60 (determined by reference to the value of comparable publicly traded securities). Whether the transaction satisfies the continuity of interest requirement is determined by reference to the value of the P stock and the P securities to be issued to the T shareholders on January 2 of Year 1. Under paragraph (e)(2)(iv) of this section, for purposes of valuing the new P securities, they will be treated as having been issued on January 2 of Year 1. Because, for continuity of interest purposes, the T stock is exchanged for $40 of P stock and $60 of other property, the transaction preserves a substantial part of the value of the proprietary interest in T. Therefore, the transaction satisfies the continuity of interest requirement.

Example 7. Economically unreasonable exchange. On January 3 of Year 1, P and T

sign a binding contract pursuant to which T will be merged with and into P on June 2 of Year 1. At that time, A is T's sole shareholder. Pursuant to the contract, 60 percent of the T stock will be exchanged for $80 of cash and 40 percent of the T stock will be exchanged for 20 shares of P stock. As of January 2, 20 shares of P stock have a value of $20, representing only 20 percent of the value of the total consideration to be received by the T shareholders. Because the percentage of proprietary interests in the target corporation to be exchanged for stock of the issuing corporation and the proprietary interests in the target corporation to be exchanged for money do not each represent an economically reasonable exchange as of the last business day before the first date there is a binding contract to effect the potential reorganization, under paragraph (e)(2)(iii)(A)(*3*) of this section, the contract is not treated as a binding contract that provides for fixed consideration.

Example 8. Absence of anti-dilution clause. On January 3 of Year 1, P and T sign a binding contract pursuant to which T will be merged with and into P on June 1 of Year 1. Pursuant to the contract, the T shareholders will receive 40 P shares and $60 of cash in exchange for all of the outstanding stock of T. The contract does not contain a customary anti-dilution provision. The P stock is listed on an established market. On January 2 of Year 1, the value of the P stock is $1 per share. On April 10 of Year 1, P issues its stock to effect a stock split; each shareholder of P receives an additional share of P for each P share that it holds. On April 11 of Year 1, the value of the P stock is $.50 per share. Because P altered its capital structure between January 3 and June 1 of Year 1 in a manner that materially alters the economic arrangement of the parties, under paragraph (e)(2)(iii)(E) of this section, the contract is not treated as a binding contract that provides for fixed consideration.

Example 9. Shareholder election with a proration mechanism. On January 3 of Year 1, P and T sign a binding contract pursuant to which T will be merged with and into P on June 1 of Year 1. Pursuant to the contract, at the shareholders' election, each share of T will be exchanged for cash of $1 or, alternatively, P stock that has a value of $1, if the value of each share of P stock is at least $.80 and no more than $1.20 on the effective date of the potential reorganization; 1.25 shares of P stock, if the value of each share of P stock is less than $.80 on the effective date of the potential reorganization; or .83 shares of P stock, if the value of each share of P stock is more than $1.20 on the effective date of the potential reorganization. In addition, the contract provides for a proration mechanism to ensure that 50 percent of the T shares will be exchanged for cash and 50 percent of the T shares will be exchanged for P stock. On January 2 of Year 1, T has 100 shares outstanding. The P stock is listed on an established market. On January 2 of Year 1, the value of the P stock is $1 per share. Because the contract provides for the percentage of the number of shares of each class of proprietary interests in T, and the percentage (by value) of the proprietary interests in T, to be exchanged for stock of P and the other requirements of paragraph (e)(2)(iii)(A)(*3*) of this section are satisfied, there is a binding contract providing for fixed consideration as of January 3 of Year 1. Therefore, whether the transaction satisfies the continuity of interest requirement is determined by reference to the value of the P stock on January 2 of Year 1. Because, for continuity of interest purposes, the T stock is exchanged for $50 of P stock and $50 of cash, the transaction preserves a substantial part of the value of the proprietary interest in T. Therefore, the transaction satisfies the continuity of interest requirement.

* * * * *

(8) *Effective date.* Paragraphs (e)(1) and (e)(3) through (e)(7) of this section apply to transactions occurring after January 28, 1998, except that they do not apply to any transaction occurring pursuant to a written agreement which is binding on January 28, 1998, and at all times thereafter. Paragraph (e)(1)(ii) of this section, however, applies to transactions occurring after August 30, 2000, unless the transaction occurs pursuant to a written agreement that is (subject to customary conditions) binding on that date and at all times thereafter. Taxpayers who entered into a binding agreement on or after January 28, 1998, and before August 30, 2000, may request a private letter ruling permitting them to apply the final regulation to their transaction. A private letter ruling will not be issued unless the taxpayer establishes to the satisfaction of the IRS that there is not a significant risk of different parties to the transaction taking inconsistent positions, for Federal tax purposes, with respect to the applicability of the final regulations to the transaction. Paragraph (e)(2) of this section applies to transactions occurring pursuant to binding contracts entered into after September 16, 2005.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: September 6, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 05–18263 Filed 9–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–05–112]

RIN 1625–AA–09

Drawbridge Operation Regulations; James River, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the James River Bridge, mile 5.0, across the James River between Isle of Wight and Newport News, Virginia. This deviation allows the drawbridge to remain closed-to-navigation on two 3-day closure periods from 7 a.m. on October 14 through 5 p.m. October 17, 2005, and from 7 a.m. on November 18 through 5 p.m. November 21, 2005, to facilitate mechanical repairs.

DATES: This deviation is effective from 7 a.m. on October 14, 2005, until 5 p.m. on November 21, 2005.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (obr), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222. Commander (obr), Fifth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6422.

SUPPLEMENTARY INFORMATION: The James River Bridge, a vertical-lift drawbridge, has a vertical clearance in the closed position to vessels of 60 feet and 145 feet in the full open position, at mean high water.

Electrical Motor Services Industrial, Inc. (EMS), is the contractor engaged to perform these repairs for the Virginia Department of Transportation (VDOT), the bridge owner. EMS, on behalf of VDOT, requested a temporary deviation from the operating regulations for the James River Bridge, set out in 33 CFR 117.5, that requires the bridge to open promptly and fully for the passage of vessels when a request to open is given.

EMS requested the temporary deviation to close the James River

Bridge to navigation to replace and install the existing motor and coupling. The vertical lift span will be locked in the closed-to-navigation position for two 3-day closure periods: From 7 a.m. on October 14, 2005, through 5 p.m. on October 17, 2005, and from 7 a.m. on November 18, 2005, through 5 p.m. on November 21, 2005. During these periods, the work requires completely immobilizing the operation of the vertical lift span in the closed-to-navigation position.

The Coast Guard has informed the known users of the waterway of the closure periods for the bridge so that these vessels can arrange their transits to minimize any impact caused by the temporary deviation.

The District Commander has granted temporary deviation from the operating requirements listed in 33 CFR 117.35 for the purpose of repairing the drawbridge. The temporary deviation allows the James River Bridge, at mile 5.0, between Isle of Wight and Newport News, Virginia, to remain closed to navigation on two 3-day closure periods: From 7 a.m. on October 14, 2005, through 5 p.m. on October 17, 2005, and from 7 a.m. on November 18, 2005, through 5 p.m. on November 21, 2005.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operations as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: September 9, 2005.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 05–18481 Filed 9–15–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[R10–OAR–2005–TR–0001; FRL–7970–2]

Announcement of the Delegation of Partial Administrative Authority for Implementation of Federal Implementation Plan for the Nez Perce Reservation to the Nez Perce Tribe

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority; technical amendment.

SUMMARY: This action announces that on June 27, 2005, EPA Region 10 and the Nez Perce Tribe entered into a Partial Delegation of Administrative Authority to carry out certain day-to-day activities associated with administration of the Federal Implementation Plan for the Nez Perce Reservation (Nez Perce FIP). A note of this partial delegation is being added to the Nez Perce FIP.

DATES: This action is effective September 16, 2005. The date of delegation can be found in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: EPA has established a docket for this action under Docket ID No. R10–OAR–2005–TR–0001. The delegation agreement and other docket materials are available electronically in EDOCKET, EPA's electronic public docket and comment system, found at *http://www.epa.gov/edocket*, or in hard copy from Steve Body at EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101, or via e-mail at *body.steve@epa.gov*. Additional information may also be obtained from the Nez Perce Tribe by contacting Julie Simpson, Air Quality Project Coordinator, Environmental Restoration and Waste Management (ERWM), Nez Perce Tribe, P.O. Box 365, Lapwai, Idaho 82540.

FOR FURTHER INFORMATION CONTACT: Steve Body at telephone number: (206) 553–0782, e-mail address: *body.steve@epa.gov*, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: The purpose of this action is to announce that on June 27, 2005, EPA Region 10, delegated partial administrative authority for implementation of certain provisions of the Nez Perce FIP to the Nez Perce Tribe. See 40 CFR part 49, subpart M, section 10401 through 10430, as authorized by 40 CFR 49.122 of the Federal Air Rules for Reservations, (FARR), 40 CFR part 49, subpart C.

I. Authority To Delegate

Federal regulation 40 CFR 49.122 provides EPA authority to delegate to Indian tribes partial administrative authority to administer provisions of the Federal Air Rules for Reservations (FARR), 40 CFR part 49, subpart C. Tribes must submit a request to the Regional Administrator that meets the requirements of 40 CFR 49.122.

II. Partial Delegation of Administrative Authority

On June 27, 2005, EPA entered into an ''Agreement for Partial Delegation of the Federal Implementation Plan for the Nez Perce Reservation by the United States Environmental Protection Agency, Region 10, to the Nez Perce Tribe.'' The Delegation Agreement provides authority for the Nez Perce Tribe to administer the following rules that are part of the Federal Implementation Plan for the Nez Perce Tribe of Idaho, 40 CFR 49.10401 through 49.10430: 49.10410(b) Section 49.124 Rule for limiting visible emissions; 49.10410(i) Section 49.131 General rule for open burning; 49.10410(j) Section 49.132 Rule for general open burning permits; 49.10410(k) Section 49.133 Rule for agricultural burning permits; 49.10410(l) Section 49.134 Rule for forestry and silvicultural burning permits; and 49.10410(n) Section 49.137 Rule for air pollution episodes.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553 (b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA is merely informing the public of partial delegation of administrative authority to the Nez Perce Tribe and making a technical amendment to the Code of Federal Regulations (CFR) by adding a note announcing the partial delegation. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

Moreover, since today's action does not create any new regulatory requirements, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3).

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely makes a technical amendment and gives notice of a partial delegation of administrative authority. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does

not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175, entitled ''Consultation and Coordination With Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the regulation. EPA has concluded that this rule may have tribal implications. EPA's action fulfills a requirement to publish a notice announcing partial delegation of administrative authority to the Nez Perce Tribe and noting the partial delegation in the CFR. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This technical amendment merely notes that partial delegation of administrative authority to the Nez Perce Tribe is in effect. This rule also is not subject to Executive Order 13045, ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 15, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 49

Administrative practice and procedure, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 7, 2005.

Julie M. Hagensen,

Acting Regional Administrator, Region 10.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 49—[Amended]

■ 1. The authority citation for part 49 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart M—[Amended]

■ 2. Section 49.10410 is amended by adding a note to the end of the section to read as follows:

§ 49.10410 Federally-promulgated regulations and Federal implementation plans.

* * * * *

Note to § 49.10410: EPA entered into a Partial Delegation of Administrative Authority Agreement with the Nez Perce Tribe on June 27, 2005 for the rules listed in paragraphs (b), (i), (j), (k), (l) and (n) of this section.

[FR Doc. 05–18425 Filed 9–15–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–DE–0001; FRL–7970–4]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to adverse comments, EPA is withdrawing the direct final rule to approve Delaware's State Implementation Plan (SIP) revision. The SIP revision pertains to the modifications to the ambient air quality standards for ozone and fine particulate matter. In the direct final rule published on July 18, 2005 (70 FR 41146), we stated that if we received adverse comments by August 17, 2005, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments. EPA will address the comments received in a subsequent final action based upon the proposed action also published on July 18, 2005 (70 FR 41166). EPA will not institute a second comment period on this action.

DATES: The direct final rule is withdrawn as of September 16, 2005.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 6, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

■ Accordingly, the added entry for Delaware's Regulation 1, Section 2, and revised entries for Regulation 3, Sections 1, 6, and 11 in 40 CFR 52.420(c) published at 70 FR 41147 are withdrawn as of September 16, 2005.

[FR Doc. 05–18565 Filed 9–15–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0129; FRL–7719–9]

Fluoxastrobin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of fluoxastrobin, (1E)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimydinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime, and its Z isomer, (1Z)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimydinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime, in or on leaf petioles subgroup 4B; peanut; peanut, hay; peanut, refined oil; tomato, paste; vegetable, fruiting, group 8; and vegetable, tuberous and corm, subgroup 1C. This regulation also establishes tolerances for the indirect or inadvertent combined residues of fluoxastrobin and its Z isomer, in or on alfalfa, forage; alfalfa, hay; cotton, gin byproducts; grain, cereal, forage, fodder and straw, group 16; grass, forage; grass, hay; and vegetable, foliage of legume, group 7. This regulation additionally establishes tolerances for the combined residues of fluoxastrobin, its Z isomer, and its phenoxy-hydroxypyrimidine metabolite, 6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinol, expressed as fluoxastrobin, in or on cattle, fat; cattle, meat; cattle, meat byproducts; goat, fat; goat, meat; goat, meat byproducts; horse, fat; horse, meat; horse, meat byproducts; milk; milk, fat; sheep, fat; sheep, meat; and sheep, meat byproducts. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 16, 2005. Objections and requests for hearings must be received on or before November 15, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP–2003–0129. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Tony Kish, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9443; e-mail address: *kish.tony@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm/*.

II. Background and Statutory Findings

In the **Federal Register** of April 23, 2003 (68 FR 19991) (FRL–7303–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3F6556) by Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, North Carolina 27709. The petition requests that 40 CFR 180.609 be amended by establishing tolerances for the combined residues of the fungicide fluoxastrobin, (1E)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimydinyl]-oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime, in or on the raw agricultural commodities (RACs) alfalfa, forage at 0.05 parts per million (ppm); alfalfa, hay at 1.0 ppm; cotton, gin byproducts at 0.02 ppm; grain, cereal, forage at 0.10 ppm; grain, cereal, hay at 0.10 ppm; grain, cereal, stover at 0.10 ppm; grain, cereal, straw at 0.10 ppm; grass, forage at 0.10 ppm; grass, hay at 0.50 ppm; legume, forage at 0.05 ppm; legume, hay at 0.05 ppm; legume, seed at 0.01 ppm; peanut at 0.01 ppm; peanut, hay at 20 ppm; peanut, refined oil at 0.10 ppm; tomato, paste at 2.0 ppm; vegetable, foliage of legume, group 7 at 0.05 ppm; vegetable, fruiting, group at 1.0 ppm; vegetable, leafy, petioles, except brassica, subgroup at 5.0 ppm; and vegetable, tuberous and corm, subgroup at 0.01 ppm. The petition also requests that 40 CFR 180.609 be amended by establishing tolerances for

the combined residues of fluoxastrobin, (1E)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimydinyl]-oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime, and its phenoxy-hydroxypyrimidine metabolite, 6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinol, in or on the RACs cattle, fat at 0.10 ppm; cattle, meat at 0.05 ppm; cattle, meat byproducts at 0.20 ppm; milk at 0.01 ppm; and milk, fat at 0.10 ppm. That notice included a summary of the petition prepared by Bayer CropScience, the registrant. Several comments concerning the notice were received. They are described and discussed in Unit V.

Based on EPA's review, the aforementioned petition was revised by the petitioner by adjusting some tolerance levels, revising the tolerance expression, and revising the commodity nomenclature to reflect the correct commodity definitions. The tolerance expression was revised to reflect the fact that fluoxastrobin E-isomer, and not the mixture of E- and Z-isomers, is the proposed active ingredient. The petition was also revised, based on extensive field rotational crop data, to add indirect tolerances for the combined residues of fluoxastrobin and its Z-isomer in/on rotated crops. As revised, the petition seeks the establishment of tolerances for combined residues of fluoxastrobin, (1E)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimydinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime, and its Z isomer, (1Z)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimydinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime, in or on the RACs leaf petioles subgroup 4B at 4.0 ppm; peanut at 0.010 ppm; peanut, hay at 20.0 ppm; peanut, refined oil at 0.030 ppm; tomato, paste at 1.5 ppm; vegetable, fruiting, group 8 at 1.0 ppm; and vegetable, tuberous and corm, subgroup 1C at 0.010 ppm, the establishment of tolerances for indirect or inadvertent residues for the combined residues of fluoxastrobin and its Z isomer, in or on the RACs alfalfa, forage at 0.050 ppm; alfalfa, hay at 0.10 ppm; cotton, gin byproducts at 0.020 ppm; grain, cereal, forage, fodder, and straw, group 16 at 0.10 ppm; grass, forage at 0.10 ppm; grass, hay at 0.50 ppm; and vegetable, foliage of legume, group 7 at 0.050 ppm; and the establishment of tolerances for the combined residues of fluoxastrobin, its Z isomer, and its phenoxy-hydroxypyrimidine metabolite, 6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinol, expressed as fluoxastrobin, in or on the RACs cattle, fat at 0.10 ppm; cattle, meat at 0.05 ppm; cattle, meat byproducts at 0.10 ppm; goat, fat at 0.10 ppm; goat, meat at 0.05 ppm; goat, meat byproducts at 0.10 ppm; horse, fat at 0.10 ppm; horse, meat at 0.05 ppm; horse, meat byproducts 0.10 ppm; milk at 0.02 ppm; milk, fat at 0.50 ppm; sheep, fat at 0.10 ppm; sheep, meat at 0.05 ppm; and sheep, meat byproducts at 0.10 ppm.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal upper limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for the fluoxastrobin tolerances described in Unit II. EPA's assessment of exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fluoxastrobin are discussed in Table 1. of this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90-Day oral toxicity-rats	NOAEL was 70.4 milligrams/kilogram/day (mg/kg/day) for males; 162.9 mg/kg/day for females. LOAEL was 580.0 mg/kg/day for males based on reduced body weight gain and food intake, vacuolation in the zona fasciculate of the adrenal cortex, calculi in the urethra and kidney, and histological lesions in kidney, urinary bladder, and urethra; 1416.1 mg/kg/day for females based on increased liver weight (by 20%).
870.3100	90-Day oral toxicity-mice	Neither a NOAEL nor a LOAEL were assigned. There was a dose related increase in liver weight in both sexes and in kidney weight in females, in addition to other effects whose toxicological relevance was considered uncertain. Among these effects were increased hepatocellular hypertrophy with cytoplasmic changes in the high-dose males and minimal to moderate kidney tubular hypertrophy in mid- and high-dose females.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3150	90-Day oral toxicity-dogs	NOAEL was 3.0 mg/kg/day (100 ppm) for both males and females. LOAEL was 24.8/24.2 mg/kg/day (800 ppm) for both males and females based on dose-related reductions in net body weight gain and food efficiency in addition to toxicity findings in the liver in both sexes (cholestasis) and in kidneys (increased relative weights in females and degeneration of the proximal tubular epithelium in males).
870.3200	28-Day dermal toxicity-rats	NOAEL was 1,000 mg/kg/day (the limit dose, for both systemic and dermal effects). No LOAEL was identified.
870.3700	Prenatal development-rats	Maternal NOAEL was greater than or equal to 1,000 milligrams per kilogram body-weight per day (mg/kg bw/day; limit dose). No maternal LOAEL was identified. Developmental NOAEL was greater than or equal to 1,000 mg/kg bw/day. No developmental LOAEL was identified.
870.3700	Prenatal development-rabbits	Maternal NOAEL was 100 mg/kg/day. Maternal LOAEL was 400 mg/kg/day based on cold ears, transient body weight loss, and decreased food consumption. Developmental NOAEL was greater than or equal to 400 mg/kg/day. No developmental LOAEL was identified.
870.3800	Reproduction and fertility effects-rats	Parental systemic NOAEL was 70.0 mg/kg/day for males and 84.7 mg/kg/day for females. Parental systemic LOAEL was 665.0 mg/kg/day for males and 825.4 mg/kg/day for females based on decreased premating body weight gain of the P-generation males and females and decreased premating absolute body weight of the F_1 males and females. Reproductive NOAEL was greater than 665.0 mg/kg/day for males and greater than 825.4 mg/kg/day for females. No reproductive LOAEL was identified. Offspring systemic NOAEL was 70.0 mg/kg/day for males and 84.7 mg/kg/day for females. Offspring systemic LOAEL was 665.0 mg/kg/day for males and 825.4 mg/kg/day for females based on decreased body weights, delayed preputial separation, and incomplete ossification in the F_1 and/or F_2 males and females.
870.4100	Chronic toxicity-dogs	NOAEL was 1.7 mg/kg/day for males and 1.5 mg/kg/day for females. LOAEL was 8.1 mg/kg/day for males and 7.7 mg/kg/day for females based on body weight reductions and hepatocytomegaly and cytoplasmic changes associated with increased serum liver alkaline phosphatase indicative of cholestasis.
870.4200	Carcinogenicity--mice	NOAEL was 775.6 mg/kg bw/day for males and 1265.1 mg/kg bw/day for females. No LOAEL was identified. There was no evidence of carcinogenicity.
870.4300	Combined chronic toxicity/carcinogenicity--rats	NOAEL was 53.0 mg/kg/day for males and 181.3 mg/kg/day for females. LOAEL was 271.9 mg/kg/day for males and 1083.2 mg/kg/day for females was based on decreased body weight, decreased body weight gain, and decreased food efficiency in both sexes; decreased spleen weight in males; and microscopic lesions in the uterus of females. The apparent increase in tumors in the uterus and thyroid were addressed and resolved by an Agency committee, which concluded that no carcinogenic concern exists for fluoxastrobin.
870.6200	Acute neurotoxicity screening battery--rats	Neurotoxicity NOAEL was greater than or equal to 2,000 mg/kg (limit dose). No LOAEL was identified.
870.6200	Subchronic neurotoxicity screening battery--rats	Systemic NOAEL (systemic and neurotoxic) was 473.9/582.4 mg/kg/day for males and females, respectively. No LOAEL was identified.
870.5100	Gene Mutation-*in vitro* bacterial reverse gene mutation	Negative (considered non-mutagenic in *Salmonella typhimurium* cultures treated up to cytotoxic/ precipitating levels).
870.5100	Gene Mutation--*in vitro* bacterial reverse gene mutation (the test substance was HEC 5725N (E:Z ratio of 90%:10%)	Negative (considered non-mutagenic in this *Salmonella typhimurium*/microsome test).

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.5100	Gene Mutation--*in vitro* bacterial reverse gene mutation (the test substance was HEC 5725-phenoxy-hydroxy-pyrimidine)	Negative (considered non-mutagenic in this *Salmonella typhimurium*/mammalian activation gene mutation assay).
870.5100	Gene Mutation--*in vitro* bacterial reverse gene mutation (the test substance was HEC 5725-dihydroxy- pyrimidine)	Negative (considered non-mutagenic in this *Salmonella typhimurium*/mammalian activation gene mutation assay).
870.5300	Gene mutation-*in vitro* mammalian forward gene mutation	Negative (considered non-mutagenic in this in vitro forward mutation V79-HPRT test).
870.5375	Gene Mutation--*in vitro* mammalian chromosome aberrations in Chinese hamster lung (V79) cells	Negative (considered to be negative for clastogenicity in this in vitro mammalian cell test).
870.5395	Cytogenics-*in vivo* mammalian cytogenetics - micronucleus assay (mouse)	Negative (considered non-clastogenic, as indicated by no increases in micronuclei in bone marrow).
870.7485	Metabolism and pharmacokinetics-rat	Absorption, distribution, and metabolism were fully characterized in several rat metabolism studies using each of the three ^{14}C-radiolabeled rings in fluoxastrobin. Absorption was almost complete following a single oral low dose. Peak plasma concentrations were attained within 0.5 to 8 hours depending on the dose and label position. Fecal excretion was the major route of elimination while renal excretion was a secondary route and elimination via expired air was negligible. Fluoxastrobin was extensively metabolized as evidenced by the extensive metabolite profiles from urine, feces, and bile and the relative absence of parent compound (except in the feces of rats given the high dose).
870.7600	Dermal penetration--monkey	Following an 8-hour dermal application in a male monkey, absorption was negligible (1.16% preliminary, 2.16% main). The normalized absorption value for the main study was 2.31%.
870.7800	Immunotoxicity-mouse (subacute feeding study)	No clinical signs of toxicity or mortality were found and no treatment-related effects were found on body weight, food intake, or B-cell activated, T-cell mediated IgM response to SRBC. Based on these findings, and findings in the 90-day oral rat study (no difference between the control and treated animals in spleen cell count, macrophage activities after PMA stimulation and plaque-forming cell assay after challenge with sheep erythrocytes), it was concluded that fluoxastrobin is not immunotoxic. However, the study is considered unacceptable because of uncertainty in dietary test material intake, failure to report spleen weight of each mouse at necropsy, and failure of the laboratory to demonstrate its capability in performing this type of assay.

B. Toxicological Endpoints

The highest dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

Three other types of safety or uncertainty factors may be used: ''Traditional uncertainty factors;'' the ''special FQPA safety factor;'' and the ''default FQPA safety factor.'' By the term ''traditional uncertainty factor,'' EPA is referring to those additional uncertainty factors used prior to FQPA passage to account for database deficiencies. These traditional uncertainty factors have been incorporated by the FQPA into the additional safety factor for the protection of infants and children. The term ''special FQPA safety factor'' refers to those safety factors that are deemed necessary for the protection of infants and children primarily as a result of the FQPA. The ''default FQPA safety factor'' is the additional 10X safety factor that is mandated by the statute unless it is decided that there are reliable data to choose a different additional factor

(potentially a traditional uncertainty factor or a special FQPA safety factor).

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by an UF of 100 to account for interspecies and intraspecies differences and any traditional uncertainty factors deemed appropriate (RfD = NOAEL/UF). Where a special FQPA safety factor or the default FQPA safety factor is used, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of safety factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk). An example of how such a probability risk is expressed would be to describe the risk as one in one hundred thousand (1×10^{-5}), one in a million (1×10^{-6}), or one in ten million (1×10^{-7}). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated.

A summary of the toxicological endpoints for fluoxastrobin used for human risk assessment is shown in Table 2. of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FLUOXASTROBIN FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment; Interspecies, Intraspecies, and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary	NOAEL = None	Not applicable	There was no indication of an adverse effect attributable to a single dose. An aRfD was not established.
Chronic Dietary (all populations)	NOAEL = 1.5 mg/kg/day UF = 100X	Special FQPA SF = 1X cPAD = 0.015 mg/kg/day	Chronic Toxicology-Dog LOAEL = 8.1 mg/kg/day for males and 7.7 mg/kg/day for females based on body weight reductions, hepatocytomegaly, and cytoplasmic changes associated with increased serum liver alkaline phosphatase that is indicative of cholestasis.
Incidental Short-Term Oral (1–30 days)	NOAEL = 3.0 mg/kg/day UF = 100X	Residential LOC for MOE = 100	90-Day Subchronic Oral Toxicology-Dog LOAEL = 24.8 mg/kg/day (800 ppm) for males and 24.2 mg/kg/day (800 ppm) for females based on dose-related reductions in net body weight gain and food efficiency; toxicity findings in the liver (cholestasis) in both sexes; and toxicity findings in the kidneys (increased relative weights in females and degeneration of the proximal tubular epithelium in males).
Incidental Intermediate-Term Oral (1–6 months)	NOAEL = 3.0 mg/kg/day UF = 100X	Residential LOC for MOE = 100	90-Day Subchronic Oral Toxicology-Dog LOAEL = 24.8 mg/kg/day (800 ppm) for males and 24.2 mg/kg/day (800 ppm) for females based on dose-related reductions in net body weight gain and food efficiency; toxicity findings in the liver (cholestasis) in both sexes; and toxicity findings in the kidneys (increased relative weights in females and degeneration of the proximal tubular epithelium in males).
Short-Term Dermal (1–30 days)	Not applicable	None	None: A 28-day dermal toxicity study in the rat was negative up to the limit dose and there are no developmental or neurotoxicity concerns.

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FLUOXASTROBIN FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment; Interspecies, Intraspecies, and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Intermediate-Term Dermal (1–6 months)	NOAEL = 3.0 mg/kg/day UF = 100X Dermal absorption rate = 2.3%	Residential LOC for MOE = 100	90-Day Subchronic Oral Toxicology-Dog LOAEL = 24.8 mg/kg/day (800 ppm) for males and 24.2 mg/kg/day (800 ppm) for females based on dose-related reductions in net body weight gain and food efficiency; toxicity findings in the liver (cholestasis) in both sexes; and toxicity findings in the kidneys (increased relative weights in females and degeneration of the proximal tubular epithelium in males).
Long-Term Dermal (greater than 6 months)	NOAEL = 1.5 mg/kg/day UF = 100X Dermal absorption rate = 2.3%	Residential LOC for MOE = 100	Chronic Toxicology-Dog LOAEL = 8.1 mg/kg/day for males and 7.7 mg/kg/day for females based on body weight reductions, hepatocytomegaly, and cytoplasmic changes associated with increased serum liver alkaline phosphatase that is indicative of cholestasis.
Short-Term Inhalation (1–30 days)	NOAEL = 3.0 mg/kg/day UF = 100X	Residential LOC for MOE = 100	90-Day Subchronic Oral Toxicology-Dog LOAEL = 24.8 mg/kg/day (800 ppm) for males and 24.2 mg/kg/day (800 ppm) for females based on dose-related reductions in net body weight gain and food efficiency; toxicity findings in the liver (cholestasis) in both sexes; and toxicity findings in the kidneys (increased relative weights in females and degeneration of the proximal tubular epithelium in males).
Intermediate-Term Inhalation (1–6 months)	NOAEL = 3.0 mg/kg/day UF = 100X	Residential LOC for MOE = 100	90-Day Subchronic Oral Toxicology-Dog LOAEL = 24.8 mg/kg/day (800 ppm) for males and 24.2 mg/kg/day (800 ppm) for females based on dose-related reductions in net body weight gain and food efficiency; toxicity findings in the liver (cholestasis) in both sexes; and toxicity findings in the kidneys (increased relative weights in females and degeneration of the proximal tubular epithelium in males).
Long-Term Inhalation (greater than 6 months)	NOAEL = 1.5 mg/kg/day UF = 100X	Residential LOC for MOE = 100	Chronic Toxicology-Dog LOAEL = 8.1 mg/kg/day for males and 7.7 mg/kg/day for females based on body weight reductions, hepatocytomegaly, and cytoplasmic changes associated with increased serum liver alkaline phosphatase that is indicative of cholestasis.
Cancer (oral, dermal, inhalation)	Classification: Not likely to be carcinogenic to humans.		

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* As is described in Unit II., tolerances for fluoxastrobin are being established on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from fluoxastrobin in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one-day or single exposure. The toxicological database for fluoxastrobin identified no adverse effect attributable to a single dose, therefore an acute dietary exposure assessment was not performed.

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™ version 2.0) and the Lifeline™ model, version 2.0, both of which incorporate food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). The assumptions made for the chronic dietary exposure assessments were that residues, for all commodities, were present at 100% of the tolerance levels and fluoxastrobin was applied to 100% of each crop to which it may be applied.

2. *Dietary exposure from drinking water*. The Agency does not have drinking water monitoring exposure data to use in a comprehensive dietary exposure analysis and risk assessment for fluoxastrobin, a new pesticidal chemical. Because of this the Agency made drinking water concentration estimates by use of simulation or modeling, which takes into account data on the physical and chemical characteristics of fluoxastrobin.

The Agency used the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS (PRZM version 3.12 beta and EXAMS version 2.98.04)), to produce estimates of pesticide concentrations in an index reservoir (the surface water concentration estimates). The Screening Concentrations in Ground Water (SCI-GROW) model was used to predict pesticide concentrations in shallow ground water (the ground water concentration estimates). The surface water concentration analysis was based on the turf use, which has the highest labeled annual application rate and assumes the highest default value of 87% percentage cropped area (PCA) land use around the index reservoir. The assumptions in this analysis are therefore also conservative. The ground water concentration analysis was based on the maximum pesticide use rate (the turf use again), the persistence of fluoxastrobin in soil, and the ability of fluoxastrobin to leach.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is unlikely that drinking water concentrations would exceed human health levels of concern.

Estimated drinking water concentrations (EDWCs) derived from these models are used to calculate drinking water levels of comparison (DWLOCs). The DWLOCs are used as points of comparison against the EDWCs. DWLOCs are theoretical upper limits on the concentration of a pesticide that could occur in drinking water without exceeding the size of the risk cup, considering the aggregate exposure to that pesticide in food and from residential uses. Since DWLOCs represent maximum allowable exposure to fluoxastrobin in drinking water, they are further discussed in the aggregate risk sections in Unit III.E.

Based on the PRZM/EXAMS and SCI-GROW models, the EDWCs of fluoxastrobin for acute exposures are 28 parts per billion (ppb) for surface water and less than 1 ppb for ground water. The EDWCs for chronic exposures are 14 ppb for surface water and less than 1 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

There is potential for homeowner exposure to fluoxastrobin in residential settings by entry to turf areas where this fungicide has previously been applied, such as lawns where children might play or golf courses that adults might be active on. Therefore, risk assessments have been performed for residential postapplication scenarios. However, only professional pest control operators will be allowed to make the turf applications so residential handler exposure was not evaluated.

Since chemical-specific data were unavailable, the Agency used general current approaches for non-occupational assessment and believes that the calculated risks represent screening level estimates. Maximum application rates have been used for all scenarios, and the risk estimates assume no dissipation of residues after day zero and do not consider removal of residues as a result of periodic cutting of the grass. Additionally, the intermediate-term endpoint was used for dermal risk estimates, even though the non-occupational exposure duration is believed to mostly be short-term (as a result of the use pattern), because no short-term dermal toxicity endpoint was identified.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to fluoxastrobin and any other substances and fluoxastrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fluoxastrobin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's OPP concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's web site at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. The toxicity database for fluoxastrobin, including acceptable developmental toxicity studies in rats and rabbits, as well as a two-generation reproduction toxicity study, provides no indication of prenatal and/or post-natal sensitivity.

3. *Conclusion*. There is a complete toxicity data base for fluoxastrobin and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The Agency therefore has recommended reducing the special FQPA SF to 1X, based on the following additional considerations. First, there are no low risk concerns indicated by the various hazard studies. The study data are of high quality, and there are no residual uncertainties with regard to the pre- and/or postnatal toxicity of this chemical. Second, the dietary food exposure assessment utilizes proposed tolerance level or higher residues and 100% crop treated information for all commodities. By using these screening-level assessments, chronic exposures and risks will not be underestimated.

Third, the dietary drinking water assessments utilize values generated by models and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations. Fourth, the residential exposure assessment utilizes activity-specific transfer coefficients and turf transferable residues (TTR), as well as maximum application rates for the postapplication scenario. The residential assessment is based on reliable data and is unlikely to underestimate exposure/risk.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against EDWCs. DWLOC values are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses, not regulatory standards for drinking water . In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)]. This allowable exposure through drinking water is the source of the DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the EPA's Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EDWCs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* The toxicological database for fluoxastrobin identified no adverse effect attributable to a single dose, therefore fluoxastrobin is not expected to pose an acute dietary risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fluoxastrobin from food will utilize 10% of the cPAD for the U.S. population, 6% of the cPAD for all infants less than 1 year old, and 25% of the cPAD for children 1 to 2 years old, the children subpopulation with the greatest exposure. Based on the use pattern, chronic residential exposure to residues of fluoxastrobin is not expected. However, there is the potential for chronic dietary exposure to fluoxastrobin in drinking water. After calculating DWLOCs and comparing them to the EDWCs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 3. of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO FLUOXASTROBIN

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EDWC (ppb)	Ground Water EDWC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.015	10	14	< 1	470
All infants (less than 1 year old)	0.015	6.0	14	< 1	140
Children 1 to 2 years old	0.015	25	14	< 1	110

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposures both take into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because all short- and intermediate-term quantitative hazard estimates (via the dermal and incidental oral routes) for fluoxastrobin are based on the same endpoint, a screening level, conservative aggregate risk assessment was conducted that combined the short-term incidental oral and intermediate-term dermal exposure estimates (i.e., the highest exposure estimates).

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 1,000 for the U.S. population, 1,100 for females 13–49 years old, and 180 for children 1–2 years old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short- and intermediate-term DWLOCs were calculated and compared to the EDWCs for chronic exposure to fluoxastrobin in ground and surface water. After calculating DWLOCs and comparing them to the EDWCs for surface and ground water, EPA does not expect short- and intermediate-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 4. of this unit:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR SHORT- AND INTERMEDIATE-TERM EXPOSURE TO FLUOXASTROBIN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EDWC (ppb)	Ground Water EDWC (ppb)	Short- and Intermediate-Term DWLOC (ppb)
U.S. population	1,000	100	28	< 1	940
Females 13–49 years old	1,100	100	28	< 1	820
Children 1–2 years old	180	100	28	< 1	140

4. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to fluoxastrobin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatography/mass spectrometry/mass spectrometry methods) is available to enforce the tolerance expression. The methods are LC/MS/MS Method No. 00604, entitled ''Analytical Determination of Residues of the Fungicide HEC 5725 In/On Cereals, Cereal Processed Products and Vegetables by HPLC-MS/MS [high-pressure liquid chromatography--mass spectrometry/mass spectrometry],'' and LC/MS/MS Method No. 00649, entitled ''Analytical Method 00649 for the Determination of Residues of HEC 5725 In/On Matrices of Plant Origin by HPLC-MS/MS.'' The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently no Mexican, Canadian, nor CODEX maximum residue limits established for fluoxastrobin.

C. Conditions

The following conditions are being imposed on Bayer CropScience (the petitioner) for the registration of fluoxastrobin.

1. Submit additional information concerning weather conditions, confirmatory raw data, and soil characteristics data for the crop field trial and field rotational crop studies.

2. Submit additional data concerning the chromatograms and chromatography in the goat metabolism study.

3. The enforcement methods must be rewritten to include instructions for the analysis of all crops, and to specify the additional ions to be monitored for quantitation.

4. A new peanut processing study must be submitted.

5. Submit reference standard materials for fluoxastrobin and several molecules related to it, including isotopically labeled internal standard reference materials, to the EPA National Pesticide Standards Repository.

6. Submit additional information concerning the grass forage and hay rotational crop field trials.

7. Submit confirmatory data and additional information concerning the storage stability data.

8. Submit additional information concerning the mouse immunotoxicity subacute feeding study.

V. Comments

In response to the notice of filing one communication was received from Susie Wilcher in the role of private citizen and one communication, undersigned by Ellen Connett, was received from the Fluoride Action Network (FAN). The communications objected to establishment of the proposed tolerances for several reasons, some of them specific and others involving generalized and unsubstantiated disagreement with EPA's risk assessment methodologies or safety findings.

Ms. Wilcher's comments contained general objections to the use of pesticides on food and to the use of animal testing to determine the safety of pesticides. The Agency understands the commentor's concerns and recognizes that some individuals believe that pesticides should be banned completely. However, under the existing legal framework provided by section 408 of the FFDCA EPA is authorized to establish pesticide tolerances or exemptions where persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute.

The Agency disagrees with the commenter's objections to animal testing. Since humans and animals have complex organ systems and mechanisms for the distribution of chemicals in the body, as well as processes for eliminating toxic substances from their systems, EPA relies on laboratory animals such as rats and mice to mimic the complexity of human and higher-order animal physiological responses when exposed to a pesticide. EPA is committed, however, to reducing the use of animals whenever possible. EPA-required studies include animals only when the requirements of sound toxicological science make the use of an animal absolutely necessary. The Agency's goal is to be able to predict the potential of pesticides to cause harmful effects to humans and wildlife by using fewer laboratory animals as models and have been accepting data from alternative (to animals) test methods for several years. As progress is made on finding or developing non-animal test models that reliably predict the potential for harm to humans or the environment, EPA expects that it will need fewer animal studies to make safety determinations.

FAN submitted a number of different comments. First, FAN asked whether fluoxastrobin was already registered in the United States and what are the names of the fluoxastrobin products used on residential turf and golf courses. Fluoxastrobin is not currently registered but with the completion of this tolerance regulation that registration should be granted shortly. To the best of EPA's knowledge, the product name under which fluoxastrobin is marketed for turf and golf course use is HEC 480 SC Fungicide.

Second, FAN suggested that a 14-week feeding study using dogs showed an effect on the thyroid, which seems to conflict with the statement that ''...There is no evidence to suggest that fluoxastrobin has any primary

endocrine disruptive potential.'' FAN stated that a ''discussion or rationale'' addressing this should have been provided. EPA does believe that the thyroid effects seen in the dog study indicated that fluoxastrobin is an endocrine disruptor. An effect on the thyroid gland, even though this gland is part of the endocrine system, does not necessarily mean that endocrine disruption has or will occur. In this case, the effects observed in the thyroid gland were induced by effects fluoxastrobin had on liver enzymes and are therefore considered secondary.

Third, FAN claimed that a ''fuller discussion and description of the metabolites of fluoxastrobin should have been presented.'' The notice states: ''The residue of concern is parent fluoxastrobin (sum of E and Z isomers).'' According to the Compendium of Pesticide Common Names, Fluoxastrobin ''was provisionally approved for the (EZ)-isomer [193740–76–0] in April 2002. The definition was changed to the (E)-isomer in January 2003 at the request of the sponsor...Because of this change it is not clear from the information supplied in this notice what isomer/metabolite are of concern.''

Fluoxastrobin is the accepted common name for the pesticidally active E-isomer of (2-[6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinyl]oxy phenyl)-5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime. The Z-isomer of fluoxastrobin is typically present at much lower levels (E:Z ratio of approximately 90:10). Additionally, the Z-isomer of fluoxastrobin is considered to be a metabolite (photo-degradate) of fluoxastrobin. The CAS Number Bayer CropScience initially obtained for fluoxastrobin pertained to both isomers combined. After consultation with the Agency, the petitioner requested that fluoxastrobin (the pesticidally active E-isomer only) be designated as the active ingredient. The tolerances that are being established today include both fluoxastrobin (i.e. the E-isomer) and the Z-isomer and the risk assessment for these tolerances was based on exposures resulting from both isomers.

Fourth, FAN requested that the Agency begin to incorporate the Chemical Abstract Service (CAS) numbers for ''every chemical, and its metabolite(s)'' in ''all future reports, especially those published in the **Federal Register**.'' EPA is evaluating the feasibility of such a step. EPA would note, however, that not every molecule or substance has a CAS number. Many metabolites do not have a CAS number, for example, because no application for a CAS number was made or is required. CAS is also often not willing to assign CAS numbers to substances it believes are not able to be characterized well enough (some petroleum distillates, for example). In addition, CAS numbers may be inappropriate in some types of reports. However, the CAS number could be a useful identifier in certain documents for molecules which have one.

FAN also commented that the data references cited in the notice of filing were not available in the docket, and that without this information, it was not possible to comment on the findings presented. In response, the Agency transmitted to FAN the human health risk assessment and the toxicological studies used in that risk assessment.

VI. Conclusion

Therefore, tolerances requested for fluoxastrobin in the revised petition are established.

VII. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0129 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 15, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2003–0129, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of he PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following:

There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 2, 2005.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.609 is added to read as follows:

§ 180.609 Fluoxastrobin; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of fluoxastrobin, (1E)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimydinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime, and its Z isomer, (1Z)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimydinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime, in or on the following raw agricultural commodities:

Commodity	Parts per million
Leaf petioles subgroup 4B	4.0
Peanut	0.010
Peanut, hay	20.0
Peanut, refined oil	0.030
Tomato, paste	1.5
Vegetable, fruiting, group 8	1.0
Vegetable, tuberous and corm, subgroup 1C	0.010

(2) Tolerances are established for the combined residues of fluoxastrobin, (1E)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimydinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime, its Z isomer, (1Z)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimydinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime, and its phenoxy-

hydroxypyrimidine metabolite, 6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinol, in or on the following raw agricultural commodities:

Commodity	Parts per million
Cattle, fat	0.10
Cattle, meat	0.05
Cattle, meat byproducts	0.10
Goat, fat	0.10
Goat, meat	0.05
Goat, meat byproducts	0.10
Horse, fat	0.10
Horse, meat	0.05
Horse, meat byproducts	0.10
Milk	0.02
Milk, fat	0.50
Sheep, fat	0.10
Sheep, meat	0.05
Sheep, meat byproducts	0.10

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* Tolerances are established for the indirect or inadvertent combined residues of fluoxastrobin, (1E)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimydinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime, and its Z isomer, (1Z)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimydinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime, in or on the following raw agricultural commodities when present therein as a result of the application of fluoxastrobin to the growing crops listed in paragraph (a)(1) of this section:

Commodity	Parts per million
Alfalfa, forage	0.050
Alfalfa, hay	0.10
Cotton, gin byproducts	0.020
Grain, cereal, forage, fodder, and straw, group 16	0.10
Grass, forage	0.10
Grass, hay	0.50
Vegetable, foliage of legume, group 7	0.050

[FR Doc. 05–18421 Filed 9–15–05; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF DEFENSE

48 CFR Part 205

[DFARS Case 2004–D025]

Defense Federal Acquisition Regulation Supplement; Provision of Information to Cooperative Agreement Holders

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 816 of the National Defense Authorization Act for Fiscal Year 2005. Section 816 increased, from $500,000 to $1,000,000, the threshold at which a DoD contract must include a requirement for the contractor to provide to cooperative agreement holders, upon their request, a list of the contractor's employees who are responsible for entering into subcontracts.

DATES: Effective September 16, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2004–D025.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 70 FR 8536 on February 22, 2005, to implement Section 816 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375). Section 816 amended 10 U.S.C. 2416(d) to increase, from $500,000 to $1,000,000, the threshold at which a DoD contract must include a requirement for the contractor to provide to cooperative agreement holders, upon their request, a list of the contractor's employees who are responsible for entering into subcontracts. The interim rule amended the prescription for use of the clause at DFARS 252.205–7000, Provision of Information to Cooperative Agreement Holders, to reflect the new dollar threshold.

DoD received no comments on the interim rule. Therefore, DoD has adopted the interim rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* While the rule reduces administrative burdens for contractors, the economic impact is not expected to be substantial.

C. Paperwork Reduction Act

The information collection requirements of the clause at DFARS 252.205–7000, Provision of Information to Cooperative Agreement Holders, have been approved by the Office of Management and Budget, under Control Number 0704–0286, for use through September 30, 2007.

List of Subjects in 48 CFR Part 205

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR Part 205, which was published at 70 FR 8536 on February 22, 2005, is adopted as a final rule without change.

[FR Doc. 05–18476 Filed 9–15–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 217

[DFARS Case 2004–D024]

Defense Federal Acquisition Regulation Supplement; Multiyear Contracting

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8008 of the Defense Appropriations Act for Fiscal Year 2005 and Section 814 of the National Defense Authorization Act for Fiscal Year 2005. Sections 8008 and 814 contain requirements related to the funding of multiyear contracts.

DATES: Effective September 16, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2004–D024.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 70 FR 24323 on May 9, 2005, to implement Section 8008 of the Defense Appropriations Act for Fiscal Year 2005 (Pub. L. 108–287) and Section 814 of the

National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375). Section 814 requires DoD to provide notice and supporting rationale to Congress before awarding a multiyear contract containing a cancellation ceiling exceeding $100 million that is not fully funded. Section 8008 places additional restrictions on the award of multiyear contracts for supplies using fiscal year 2005 appropriated funds.

DoD received no comments on the interim rule. Therefore, DoD has adopted the interim rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule addresses internal DoD planning, budgeting, and reporting requirements related to the award of multiyear contracts.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 217

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR Part 217, which was published at 70 FR 24323 on May 9, 2005, is adopted as a final rule without change.

[FR Doc. 05–18475 Filed 9–15–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 050520139-5239-02; I.D. 030305A]

RIN 0648–AS46

Magnuson-Stevens Act Provisions; Fishing Capacity Reduction Program; Bering Sea/Aleutian Islands King and Tanner Crabs; Industry Fee System for Fishing Capacity Reduction Loan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS establishes regulations to implement an industry fee system for repaying a $97,399,357.11 Federal loan financing a fishing capacity reduction program in the Bering Sea/Aleutian Islands King and Tanner Crab fishery. This action implements the fee system.

DATES: This final rule is effective, and crab program fee payment collection will begin, on October 17, 2005.

ADDRESSES: Copies of the Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis (EA/RIR/FRFA) for the program may be obtained from Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282.

Written comments involving the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule should be submitted in writing to Michael L. Grable, at the above address, and to David Rostker, Office of Management and Budget (OMB), by e-mail at *David__Rostker@omb.eop.gov* or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, (301) 713–2390.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 312(b)-(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b) through (e)) generally authorized fishing capacity reduction programs. In particular, section 312(d) authorized industry fee systems for repaying the reduction loans which finance reduction program costs.

Subpart L of 50 CFR part 600 is the framework rule generally implementing sections 312(b)-(e).

Sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g) generally authorized reduction loans.

The Consolidated Appropriations Act of 2001 (Public Law 106–554) directed the Secretary of Commerce to establish a $100 million fishing capacity reduction program in the Bering Sea/Aleutian Islands king and Tanner crab fishery. Congress amended the authorizing Act twice (Public Law 107–20 and Public Law 107–117), once to change the crab reduction program's funding from a $50 million appropriation and a $50 million loan to a $100 million loan and once to clarify provisions about crab fishery vessels.

NMFS published the crab reduction program's proposed implementation rule on December 12, 2002 (67 FR 76329) and its final rule on December 12, 2003 (68 FR 69331). Anyone interested in the program's full implementation details should refer to these two documents. NMFS initially proposed and adopted the program's implementation rule as section 600.1018 of Subpart L of 50 CFR part 600, but NMFS has since, without other change, re-designated the rule as section 600.1103 in a new subpart M of part 600.

To avoid confusion, the following table identifies the various part 600 rules involved in or affecting the crab reduction program:

DESCRIPTION	SUBPART	SECTION
Reduction Framework Rule	L	600.1000–600.1017
Program Implementation Rule's Initial Designation	L	600.1018
Program Implementation Rule's Re-designation	M	600.1103
Fee Rule	M	600.1104

The crab reduction program's maximum cost was $100 million consisting of a 30-year loan to be repaid by fees on future crab landings. Each of six of the crab fishery's seven former crab area/species endorsement fisheries were to pay fees at different rates. In return for reduction payments equaling their bid amounts, voluntary program participants relinquished, among other things, their crab fishing license limitation program (LLP) licenses and other permits, their catch histories associated with those licenses and

permits, and their crab fishing vessels' worldwide fishing privileges.

NMFS notice in the **Federal Register** (69 FR 7421) issued the crab reduction program's invitation to bid on February 17, 2004. The bidding period opened on March 5, 2004, and closed on April 23, 2004. NMFS scored each bid's amount against the bidder's past ex-vessel crab revenues and, in a reverse auction, accepted the bids whose amounts were the lowest percentages of the revenues.

Forty-two non-interim crab LLP license holders submitted bids totaling $192,600,916. NMFS accepted 28 bids totaling $99,878,316. The next lowest scoring bid would have exceeded the program's maximum cost.

NMFS next held a referendum about the fees. The reduction contracts would have become void unless a ⅔ majority of votes cast in the referendum approved the fees. Each crab LLP license holder received one vote. NMFS mailed ballots to qualifying referendum voters and the voting period opened on May 7, 2004. The voting period closed on June 11, 2004. NMFS received 283 timely votes, four of which were otherwise unresponsive. Approximately 93 percent (259 votes) approved the fees. The referendum appeared to be successful.

Before publishing a reduction payment tender notice, however, NMFS learned that the crab catch history for some reduction/history vessels overstated their actual crab catch history during the bid scoring period. This resulted from a computer programming error which multiplied the crab catch history of co-owned reduction/history vessels times the number of vessel co-owners. Accordingly, the bids associated with these vessels appeared to have more crab catch history during the bid scoring period than they actually did. This resulted in some inaccurate bid scores.

Because of the government's unilateral mistake, the information NMFS provided to the referendum voters on May 7, 2004, was materially inaccurate. In response, NMFS readministered the referendum by mailing new ballots to qualifying referendum voters. The voting period opened on July 9, 2004, and closed on July 30, 2004. NMFS received 236 timely votes. This referendum was not successful since only approximately 46 percent (109) of the votes cast approved the fees.

Because of the first referendum's special circumstances, NMFS decided to re-invite bids and held a second referendum based on the new bidding results. The second bidding period opened on August 6, 2004, and closed on September 24, 2004. Fifty-five non-interim crab LLP license holders submitted bids totaling $225,954,284.

NMFS again scored each bid's amount against the bidder's past ex-vessel revenues and, in a reverse auction, accepted the bids whose amounts were the lowest percentages of the revenues.

NMFS accepted 25 bids totaling $97,399,357.11. The next lowest scoring bid would have exceeded the program's maximum cost. The accepted bids involved 25 fishing vessels as well as 62 fishing licenses or permits. Twenty-five of the permits were non-interim crab fishery LLP licenses. The remaining included 15 groundfish fishing licenses, 20 Federal fishery vessel permits, one high seas permit, and one halibut individual fishing quota share allocation.

NMFS allocated the prospective $97,399,357.11 reduction loan to the six reduction endorsement fisheries involved, as the following sub-amounts:

1. Bristol Bay red king, $17,129,957.23,
2. BSAI *C. opilio* and *C. bairdi*, $66,410,767.20,
3. Aleutian Islands brown king, $6,380,837.19,
4. Aleutian Islands red king, $237,588.04,
5. Pribilof red king and Pribilof blue king, $1,571,216.35, and
6. St. Matthew blue king, $5,668,991.10.

NMFS next held a another fee referendum. The reduction contracts would have become void unless a ⅔ majority of votes cast in the second referendum approved the fees. Each crab LLP license holder received one vote. NMFS mailed ballots to 313 qualifying referendum voters. The voting period opened on October 1, 2004, and closed on November 15, 2004. NMFS received 273 timely votes. Over 79 percent (217 votes) approved the fees. The referendum was successful. Accordingly, the reduction contracts were in full force and effect.

On November 24, 2004, NMFS published another **Federal Register** notice (69 FR 68313) advising the public that NMFS would, beginning on December 27, 2004, tender the crab reduction program's reduction payments to the 25 accepted bidders. On December 27, 2004, NMFS required all accepted bidders to then permanently stop all further fishing with the reduction vessels and permits. Subsequently, NMFS:

1. Disbursed $97,399,357.11 in reduction payments to 25 accepted bidders;
2. Revoked the relinquished reduction permits;
3. Revoked each reduction vessel's fishing history;
4. Notified the National Vessel Documentation Center to revoke the reduction vessels' fishery trade endorsements and appropriately annotate the reduction vessel's document; and
5. Notified the U.S. Maritime Administration to prohibit the reduction vessel's transfer to foreign ownership or registry.

On March 2, 2005, NMFS published a final rule (70 FR 10174 *et seq)*, effective April 1, 2005, implementing Amendments 18 and 19 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crab. Among other things, this rule added a new part 680 to this chapter. Amendments 18 and 19 amended the crab fishery management plan to include the Voluntary Three-Pie Cooperative Program, otherwise known as the Crab Rationalization Program (CRP).

The CRP involves terminology which sometimes differs from the terminology in the crab reduction program's implementation rule. For example, the CRP uses different terminology for each of the eight crab rationalization fisheries which, under the crab reduction program's implementation rule, constitute only six reduction endorsement fisheries. Rather than redefining these terms for an already completed crab reduction program, this action retains these terms and cross references them to the new CRP terms.

The following table cross references the terms for the six reduction endorsement fisheries involved in the crab reduction program with the different terminology for the eight crab rationalization fisheries involved in the CRP:

REDUCTION ENDORSEMENT FISHERIES	CRAB RATIONALIZATION FISHERIES
Bristol Bay red king	Bristol Bay red king (BBR)
BSAI *C. opilio* and *C. bairdi*	Bering Sea snow (BSS) and Bering Sea tanner (BST)
Aleutian Islands brown king	Eastern Aleutian Islands golden king (EAG) and Western Aleutian Islands golden king (WAG)
Aleutian Islands red king	Western Aleutian Islands red king (WAI)
Pribilof red king and Pribilof blue king	Pribilof red king and blue king (PIK)
St. Matthew blue king	St. Matthew blue king (SMB)

Please note that, in two instances, what are two separate crab

rationalization fisheries are together in one reduction endorsement fishery. Consequently, both of the two separate crab rationalization fisheries will, in each of the two instances, pay fees at the same rate as the one reduction endorsement fishery in which the two fisheries are included until the one fishery's reduction loan sub-amount, for whose payment the two fisheries are equally obligated, is fully repaid.

On July 28, 2005, NMFS published a **Federal Register** document (70 FR 43673) proposing regulations to implement the crab buyback program's industry fee system.

II. Final Fee Rule

NMFS has completed the crab reduction program except for implementing the fee. This final rule implements the fee. The final rule will be effective, and fee payment and collection will begin on, October 17, 2005.

The terms defined in § 600.1103 of the crab reduction program's implementation rule and in § 600.1000 of the program's framework rule apply to this action except for the definitions of ''reduction endorsement fishery'' and ''reduction fishery''. This action refines the definitions of these two terms to reflect the post-CRP fishery's circumstances. The new definitions of these terms in § 600.1104 supersede the old definitions in this subpart's § 600.1103.

The framework rule's § 600.1013 governs fee payment and collection in general, and this action applies the § 600.1013 provisions to the crab reduction program.

Under § 600.1013, the first ex-vessel buyers (fish buyers) of post-reduction fish (fee fish) subject to an industry fee system must withhold the fee from the trip proceeds which the fish buyers would otherwise have paid to the parties (fish sellers) who harvested and first sold the fee fish to the fish buyers. Fish buyers calculate the fee to be collected by multiplying the applicable fee rate times the fee fish's full delivery value. Delivery value is the fee fish's full fair market value, including all in-kind compensation or other goods or services exchanged in lieu of cash.

Fish sellers pay the fees when fish buyers collect by withholding the applicable amount from trip proceeds. Fee payment and collection is mandatory, and there are substantial penalties for failing to pay and collect fees in accordance with the applicable regulations.

The framework rule's § 600.1014 governs how fish buyers must deposit, and later disburse to NMFS, the fees which they have collected as well as how they must keep records of, and report about, collected fees.

Under the framework rule's § 600.1014, fish buyers must, no less frequently than at the end of each business week, deposit collected fees in segregated and federally insured accounts until, no less frequently than on the last business day of each month, they disburse all collected fees in the accounts to a lockbox which NMFS has specified for this purpose. Settlement sheets must accompany these disbursements. Fish buyers must maintain specified fee collection records for at least 3 years and send NMFS annual reports of fee collection and disbursement activities.

To provide more accessible services, streamline collections, and save taxpayer dollars, fish buyers may disburse collected fee deposits to NMFS by using a secure Federal system on the Internet known as Pay.gov. Pay.gov enables fish buyers to use their checking accounts to electronically disburse their collected fee deposits to NMFS. Fish buyers who have access to the Internet should consider using this quick and easy collected fee disbursement method. Fish buyers may access Pay.gov by going directly to Pay.gov's Federal website at: *http://www.pay.gov/paygov/*.

Fish buyers who do not have access to the Internet or who simply do not wish to use the Pay.gov electronic system, must disburse their collected fee deposits to us by sending their checks to our lockbox. Our lockbox's address is:

NOAA Fisheries BSAI Crab Buyback
P O Box 979060
St. Louis, MO 63197–9000

Fish buyers' must not forget to include with their disbursements the fee collection report applicable to each disbursement. The fee collection report tells NMFS how much of the disbursement it must apply to each of the six reduction endorsement fisheries subamounts. Fish buyers using Pay.gov will find an electronic fee collection report form to receive information and accompany electronic disbursements. Fish buyers who do not use Pay.gov must include a hard copy fee collection report with each of their disbursements. Fish buyers not using Pay.gov may also access the NMFS website for an Excel spreadsheet version of the fee collection report at: *http://www.nmfs.noaa.gov/mb/financial__services/*.

NMFS will, before the fee's effective date, separately mail a copy of this notice, along with detailed fee payment, collection, deposit, disbursement, recording, and reporting information and guidance, to each fish seller and fish buyer of whom NMFS has notice. The fact that any fish seller or fish buyer might not, however, receive from NMFS a copy of the notice or of the information and guidance does not relieve the fish seller or fish buyer from his fee obligations under the applicable regulations.

All parties interested in this action should carefully read the following framework rule sections, whose detailed provisions apply to the fee system for repaying the crab reduction program's loan:

1. § 600.1012;
2. § 600.1013;
3. § 600.1014;
4. § 600.1015;
5. § 600.1016; and
6. § 600.1017.

You will not understand this action's full requirements unless you read this action in conjunction with reading at least the framework rule sections listed above.

NMFS, in accordance with the framework rule's section 600.1013(d), establishes the initial fee for the program's six reduction endorsement fisheries. NMFS will then separately mail notification to each affected fish seller and fish buyer of whom NMFS has notice. Until this notification, fish sellers and fish buyers do not have to either pay or collect the fee. The initial fee rates applicable to each reduction endorsement fishery are as indicated in the last column of the following table:

REDUCTION ENDORSEMENT FISHERIES	CRAB RATIONALIZATION FISHERIES	LOAN SUB-AMOUNT	FEE RATE
Bristol Bay red king	BBR	$17,129,957.23	1.9%
BSAI *C. opilio* and *C. bairdi*	BSS and BST	$66,410,767.20	5.0%
Aleutian Islands brown king	EAG and WAG	$6,380,837.19	2.6%
Aleutian Islands red king	WAI	$237,588.04	5.0%
Pribilof red king and Pribilof blue king	PIK	$1,571,216.35	5.0%
St. Matthew Blue	SMB	$5,668,991.10	5.0%

The rates are percentages of delivery value. Please see the framework rule's § 600.1000 for the definition of ''delivery value'' and of the other terms relevant to this final rule.

Each disbursement of the reduction loan's $97,399,357.11 principal amount began accruing interest as of the date of each such disbursement. The loan's interest rate will be the applicable rate, plus 2 percent, which the U.S. Treasury determines at the end of fiscal year 2005.

III. Summary of Comments and Responses

NMFS received one comment in response to the proposed fee regulations. This comment requested higher fee rates than the ones in NMFS' proposed regulations. NMFS' proposed fee rates were, however, the ones necessary to amortize the loan subamounts in accordance with the legislation authorizing the crab reduction program, and the final rule does not increase these rates.

Consequently, this action adopts the proposed fee regulations without revision.

Classification

The Assistant Administrator for Fisheries, NMFS, determined that this final rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

In compliance with the National Environmental Policy Act, NMFS prepared an environmental assessment for the crab reduction program's final implementing rule (December 12, 2003; 68 FR 69331). The assessment discusses the program's impact on the natural and human environment. The assessment resulted in a finding of no significant impact. The assessment considered, among other alternatives, the implementation of the fee payment and collection in this action. NMFS will provide a copy of the assessment upon request (see **ADDRESSES**).

The Office of Management and Budget determined that this rule is significant under Executive Order 12866. NMFS prepared a Regulatory Impact Review for the crab reduction program's final rule. NMFS will provide a copy of the review upon request (see **ADDRESSES**).

NMFS prepared a Final Regulatory Flexibility Analysis for the crab reduction program as required by the Regulatory Flexibility Act's section 603. The analysis describes the impact this final rule would have on small entities. NMFS will provide a copy of the analysis upon request (see **ADDRESSES**). An analysis summary follows:

1. Description of Reasons for Action and Statement of Objective and Legal Basis

Please see the initial background section of this action's supplementary information, because the information there is similar to the analysis in this regard.

2. Description of Small Entities to Which the Rule Applies

The Small Business Administration has defined small entities to be all fish harvesting businesses which are independently owned and operated, are not dominant in their field of operation, and have annual receipts of $3.5 million or less. The definition also includes processors with 500 or fewer employees involved in related industries such as canned and cured fish and seafood or preparing fresh fish and seafood. Moreover, the definition also includes virtually all harvesting vessels.

3. Description of Recordkeeping and Compliance Costs

Please see this action's collection-of-information requirements following the analysis.

4. Duplication or Conflict with Other Federal Rules

This rule does not duplicate or conflict with any federal rules.

5. Description of Significant Alternatives Considered

NMFS considered three alternatives: (1) status quo (no fees); (2) buyback with uniform fees; and (3) buyback with weighted (by reduction endorsement fishery) fees.

Status Quo (Alternative 1)

Under the status quo, vessel revenues would not be affected. The status quo is a significant alternative to this action because the former involves no fees and the latter does. NMFS could not choose this alternative because it is contrary to Public Law 106–554.

Uniform Loan Repayment Fees (Alternative 2)

Under Alternative 2, NMFS would apply one fee to the entire crab fishery rather than assigning a different fee to each of the six reduction endorsement fisheries based on their proportional bid crab values. NMFS could not choose this alternative because it is contrary to Public Law 106–554.

Repayment Fees (Alternative 3)

Under Alternative 3, NMFS would assign a different fee rate for each of the six reduction endorsement fisheries based on their proportional bid crab values. Like Alternative 2, Alternative 3 would adversely affect vessel revenues. Nevertheless, Alternative 3 is the most equitable because it apportions repayment obligations based on the actual reduction benefits which each reduction endorsement fishery actually received. This is the preferred alternative both because it is the most equitable and Public Law 106–554 requires this alternative's method.

6. Steps the Agency Has Taken to Mitigate Negative Effects of the Action

With the lack of available cost data, increases in revenues may serve as a proxy for increased profitability. Further, in light of available revenue data, and assuming that each individual vessel shares in the increased revenues resulting from the crab buyback program, the comparison of the relative effects of the program versus the effects of the fees show that overall economic benefits of the program would still be greater than the relative fees charged under this rule. NMFS is not aware of any other measures that could reduce the impact on small entities and still meet statutory requirements.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act. OMB has approved these information collections under OMB control number 0648–0376. NMFS estimates that the public reporting burden for these requirements will average:

1. Two hours for submitting a monthly fish buyer settlement sheet;

2. Four hours for submitting an annual fish buyer report; and

3. Two hours for making a fish buyer/fish seller report when one party fails to either pay or collect the fee.

These response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to both NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, and no person is subject to a penalty for failure to comply with, any information collection subject to the Paperwork Reduction Act unless that information collection displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing capacity reduction, Fishing permits, Fishing vessels, Intergovernmental relations, Loan

programs business, Reporting and recordkeeping requirements.

Dated: September 13, 2005.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons in the preamble, the National Marine Fisheries Service amends 50 CFR part 600 as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1861a(b) through (e), 46 App. U.S.C. 1279f and 1279g, section 144(d) of Division B of Pub. L. 106–554, section 2201 of Pub. L. 107–20, section 205 of Pub. L. 107–117, Pub. L. 107–206, and Pub. L. 108–7.

■ 2. Section 600.1104 text is added to read as follows:

§ 600.1104 Bering Sea and Aleutian Islands (BSAI) crab species fee payment and collection system.

(a) *Purpose.* As authorized by Public Law 106–554, this section's purpose is to:

(1) In accordance with § 600.1012 of subpart L, establish:

(i) The borrower's obligation to repay a reduction loan, and

(ii) The loan's principal amount, interest rate, and repayment term; and

(2) In accordance with § 600.1013 through § 600.1016 of subpart L, implement an industry fee system for the reduction fishery.

(b) *Definitions.* Unless otherwise defined in this section, the terms defined in § 600.1000 of subpart L and § 600.1103 of this subpart expressly apply to this section. The following terms have the following meanings for the purpose of this section:

Crab rationalization crab means the same as in § 680.2 of this chapter.

Crab rationalization fisheries means the same as in § 680.2 of this chapter.

Reduction endorsement fishery means any of the seven fisheries that § 679.2 of this chapter formerly (before adoption of part 680 of this chapter) defined as crab area/species endorsements, except the area/species endorsement for Norton Sound red king. More specifically, the reduction endorsement fisheries, and the crab rationalization fisheries which (after adoption of part 680 of this chapter) correspond to the reduction endorsement fisheries, are:

(1) Bristol Bay red king (the corresponding crab rationalization fishery is Bristol Bay red king crab),

(2) Bering Sea and Aleutian Islands Area *C. opilio* and *C. bairdi* (the corresponding crab rationalization fisheries are two separate fisheries, one for Bering Sea snow crab and another for Bering Sea Tanner crab),

(3) Aleutian Islands brown king (the corresponding crab rationalization fisheries are the two separate fisheries, one for Eastern Aleutian Islands golden king crab and another for Western Aleutian Islands golden king crab),

(4) Aleutian Islands red king (the corresponding crab rationalization fishery is Western Aleutian Islands red king crab),

(5) Pribilof red king and Pribilof blue king (the corresponding crab rationalization fishery is Pribilof red king and blue king crab), and

(6) St. Matthew blue king (the corresponding crab rationalization fishery is also St. Matthew blue king crab).

Reduction fishery means the fishery for all crab rationalization crab in all crab rationalization fisheries. *Sub-amount* means the portion of the reduction loan amount for whose repayment the borrower in each reduction endorsement fishery is obligated.

(c) *Reduction loan amount.* The reduction loan's original principal amount is $97,399,357.11.

(d) *Sub-amounts.* The sub-amounts are:

(1) For Bristol Bay red king, $17,129,957.23;

(2) For Bering Sea and Aleutian Islands Area *C. opilio* and *C. bairdi*, $66,410,767.20;

(3) For Aleutian Islands brown king, $6,380,837.19;

(4) For Aleutian Islands red king, $237,588.04;

(5) For Pribilof red king and Pribilof blue king, $1,571,216.35; and

(6) For St. Matthew blue king, $5,668,991.10.

(e) *Interest accrual from inception.* Interest began accruing on each portion of the reduction loan amount on and from the date on which NMFS disbursed each such portion.

(f) *Interest rate.* The reduction loan's interest rate shall be the applicable rate which the U.S. Treasury determines at the end of fiscal year 2005 plus 2 percent.

(g) *Repayment term.* For the purpose of determining fee rates, the reduction loan's repayment term is 30 years from January 19, 2005, but each fee shall continue indefinitely for as long as necessary to fully repay each subamount.

(h) *Reduction loan repayment.* (1) The borrower shall, in accordance with § 600.1012, repay the reduction loan;

(2) Fish sellers in each reduction endorsement fishery shall, in accordance with § 600.1013, pay the fee at the rate applicable to each such fishery's subamount;

(3) Fish buyers in each reduction endorsement fishery shall, in accordance with § 600.1013, collect the fee at the rate applicable to each such fishery;

(4) Fish buyers in each reduction endorsement fishery shall, in accordance with § 600.1014, deposit and disburse, as well as keep records for and submit reports about, the fees applicable to each such fishery; and,

(5) The reduction loan is, in all other respects, subject to the provisions of § 600.1012 through § 600.1017.

[FR Doc. 05–18444 Filed 9–15–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 091205A]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; apportionment of reserves; request for comments.

SUMMARY: NMFS apportions amounts of the non-specified reserve of groundfish to the yellowfin sole initial total allowable catch (ITAC) in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the fishery to continue operating. It is intended to promote the goals and objectives of the fishery management plan for the BSAI.

DATES: Effective September 16, 2005 through 2400 hrs, Alaska local time, December 31, 2005. Comments must be received at the following address no later than 4:30 p.m., Alaska local time, September 28, 2005.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail to: P.O. Box 21668, Juneau, AK 99802;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska;
- Fax to 907–586–7557;
- E-mail to *bsairelys2@noaa.gov* and include in the subject line of the e-mail comment the document identifier: bsairelys; or
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2005 ITAC of yellowfin sole in the BSAI was established as 83,883 metric tons by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005) and the release of non-specified reserves on July 28, 2005 (70 FR 43644, July 28, 2005). The Administrator, Alaska Region, NMFS, has determined that the ITAC for yellowfin sole in the BSAI needs to be supplemented from the non-specified reserve in order to continue operations.

Therefore, in accordance with § 679.20(b)(3), NMFS apportions 3,500 metric tons from the non-specified reserve of groundfish to the yellowfin sole ITAC in the BSAI. This apportionment is consistent with § 679.20(b)(1)(ii) and does not result in overfishing of a target species because the revised ITAC is equal to or less than the specification of the acceptable biological catch (70 FR 8979, February 24, 2005).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and 679.20(b)(3)(iii)(A) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the apportionment of the non-specified reserves of groundfish to the yellowfin sole fishery. NMFS was unable to publish a action providing time for public comment because the most recent, relevant data only became available as of August 24, 2005.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under 679.20(b)(3)(iii), interested persons are invited to submit written comments on this action (see **ADDRESSES**) until September 28, 2005.

This action is required by 50 CFR 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: September 12, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–18443 Filed 9–13–05; 1:23 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 179
Friday, September 16, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 250

RIN 3206–AK77

Personnel Management In Agencies—Employee Surveys

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations concerning employee surveys required by the National Defense Authorization Act for Fiscal Year 2004. The regulations will add a new subpart which requires agencies to conduct an annual survey of their employees. In addition, the proposed regulations provide a list of questions that must appear in each agency's employee survey.

DATES: Comments must be received on or before October 17, 2005.

ADDRESSES: You may submit comments, identified by RIN number, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *employ@opm.gov.* Include ''RIN 3206–AK77, Employee Surveys'' in the subject line of the message.
- Fax: (202) 606–2329.
- Mail: Mark Doboga, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415–9700.
- Hand Delivery/Courier: U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: For information on the survey questions, contact Nancy Kichak by phone on 202–606–0722, by FAX on 202–606–2922, or by e-mail at *nancy.kichak@opm.gov.* For all other information, contact Hakeem Basheerud-Deen by phone on 202–606–1434, by FAX on 202–606–2329, or by e-mail at *hakeem.basheerud-deen@opm.gov.* You may contact Ms. Kichak and Mr. Basheerud-Deen by TTY on 202–418–3134.

SUPPLEMENTARY INFORMATION:

Requiring Annual Employee Surveys

Section 1128 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136, 5 U.S.C. 7101 note) requires each agency to conduct an annual survey of its employees ''to assess—

(1) Leadership and management practices that contribute to agency performance; and

(2) Employee satisfaction with—

(A) Leadership policies and practices;

(B) Work environment;

(C) Rewards and recognition for professional accomplishment and personal contributions to achieving organizational mission;

(D) Opportunity for professional development and growth; and

(E) Opportunity to contribute to achieving organizational mission.

Prescribing Certain Survey Questions

The law requires OPM to ''issue regulations prescribing survey questions that should appear on all agency surveys.'' In addition, the law requires agencies to make the survey results available to the public and post the results on their Web sites, unless the head of the agency determines that doing so would jeopardize or negatively impact national security.

To select the survey questions to prescribe in regulation, OPM survey staff identified questions from the 2002 Federal Human Capital Survey (FHCS) that meet one of the assessment requirements in law. OPM survey staff subjected those questions to a regression analysis to identify the questions with the highest correlation to leadership and management practices or employee satisfaction.

As a second step, OPM survey staff independently listed major components of human capital management and verified that OPM had selected at least one question in each area. As a result, OPM added questions that address security and performance appraisal.

Based on these considerations, staff applied judgment to pare the list down to 24 questions. The recommended questions were presented at a Chief Human Capital Officers Council meeting, as well as a meeting with interested agency stakeholders and survey staff. Analysis of the comments received resulted in the addition of one question and the slight modification of several others. Finally, OPM survey staff convened a panel of senior experts to review the list of questions. The panel added three questions to improve coverage of human capital management systems and to ensure the 28 questions selected comply with the law.

The assessment requirements in law are restated below, with the questions that meet each requirement identified by number in brackets [].

(1) Leadership and management practices that contribute to agency performance [5, 6, 7, 11, 12, 13, 17, 20]; and

(2) Employee satisfaction with [27];

(A) Leadership policies and practices [18, 19, 23, 25];

(B) Work environment [1, 10, 21, 22];

(C) Rewards and recognition for professional accomplishment and personal contributions to achieving organizational mission[14, 15, 24, 28];

(D) Opportunity for professional development and growth [2, 16, 26]; and

(E) Opportunity to contribute to achieving organizational mission [3, 4, 8, 9].

OPM may vary the composition of the survey questions from time to time. The questions published in 5 CFR part 250, subpart C, will remain valid until changed by OPM through the regulatory process. Agencies should prepare and conduct surveys in accordance with professionally accepted survey standards to: ensure results are of high quality (*e.g.,* the agency uses a communication strategy to publicize the survey and has determined an appropriate survey sample); the survey adequately assesses employee satisfaction; and the processing protects respondent confidentiality. The Government Accountability Office (GAO) publication entitled ''Developing and Using Questionnaires'' (October 1993, GAO/PEMD–10.1.7) provides guidance for agency use. OPM will provide additional guidance to agencies on this topic.

Agency Discretion

Agencies retain discretion to decide who shall administer their surveys, how

the information will be collected, and how the results will be made available to the public and posted on their Web sites. Agencies may contract with other agencies, including OPM, or other sources to conduct surveys, but are not required to do so.

Agencies may add survey questions, change the order of the questions, and ''reverse'' the order of responses, except for the ''Do Not Know'' response option, which should remain last.

Using Agency Results

Survey results will be used to compare data over time and across agencies. Further, the survey results will support the requirement that OPM ''design a set of systems, including appropriate metrics, for assessing the management of human capital by Federal agencies,'' as set forth in 5 U.S.C. 1103(c). OPM is preparing proposed regulations revising 5 CFR 250 to provide this design and appropriate metrics.

Data Collection

Data must be collected by December 31 of each calendar year. To coordinate and encourage the timely availability of agency survey results, OPM is establishing a date of no later than 120 days after an agency completes survey administration each year for posting survey results on agency Web sites, based on surveys conducted during that calendar year. OPM expects to issue final regulations in early 2006. Consequently, each agency will need to conduct its employee survey by December 31 of each calendar year, beginning with calendar year 2006, and post results no later than 120 days after survey administration is complete, as noted in the regulation.

Relationship to Federal Human Capital Survey

In years when OPM administers the Federal Human Capital Survey (FHCS), which will always include the survey questions prescribed in 5 CFR part 250, subpart C, it is anticipated agencies will choose to use the FHCS to comply with the requirement to survey employees for that calendar year. OPM ultimately expects to administer the FHCS in the fall of even-numbered years and to offer services to support agencies surveying their employees with the subpart C questions in the fall of odd-numbered years. To achieve a systematic 12-month interval with survey administrations ultimately accomplished each fall, and given the fact that surveys using subpart C questions will not be conducted in calendar year 2005, OPM plans to address the annual employee survey requirement for 2006 by administering the next FHCS in late spring 2006. In 2007, agencies could administer the subpart C questions in the fall. In future even-numbered calendar years, the FHCS would be administered in the fall.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 250

Authority delegations (Government agencies), Government employees.

Office of Personnel Management.

Linda M. Springer,

Director.

Accordingly, OPM is proposing to amend 5 CFR part 250, as follows:

PART 250—PERSONNEL MANAGEMENT IN AGENCIES

1. The authority citation is revised to read as follows:

Authority: 5 U.S.C. 1101 note, 1103(a)(5), 1104, 1302, 3301, 3302, 7101 note; E.O. 13197, 66 FR 7853, 3 CFR 748 (2002); E.O. 10577, 12 FR 1259, 3 CFR, 1954–1958 Comp., p. 218.

2. Add subpart B to read as follows:

Subpart B—[Reserved]

3. Add subpart C to read as follows:

Subpart C—Employee Surveys

Sec.

Subpart C—Employee Surveys

§ 250.301 Survey requirements.

(a) Each executive agency, as defined in 5 U.S.C. 105, must conduct an annual survey of its employees containing each question in this section.

(b) The 28 prescribed employee survey questions and response choices are listed in the following table:

Employee survey questions	Employee response choices
Personal Work Experiences	
(1) The people I work with cooperate to get the job done	Strongly Agree, Agree, Neither Agree Nor Disagree, Disagree, or Strongly Disagree.
(2) I am given a real opportunity to improve my skills in my organization.	Strongly Agree, Agree, Neither Agree Nor Disagree, Disagree, or Strongly Disagree.
(3) My work gives me a feeling of personal accomplishment	Strongly Agree, Agree, Neither Agree Nor Disagree, Disagree, or Strongly Disagree.
(4) I like the kind of work I do	Strongly Agree, Agree, Neither Agree Nor Disagree, Disagree, or Strongly Disagree.
(5) Overall, how good a job do you feel is being done by your immediate supervisor/team leader?	Very Good, Good, Fair, Poor, or Very Poor.
Recruitment, Development & Retention	
(6) The workforce has the job-relevant knowledge and skills necessary to accomplish organizational goals.	Strongly Agree, Agree, Neither Agree Nor Disagree, Disagree, Strongly Disagree, or Do Not Know.
(7) My work unit is able to recruit people with the right skills	Strongly Agree, Agree, Neither Agree Nor Disagree, Disagree, Strongly Disagree, or Do Not Know.
(8) I know how my work relates to the agency's goals and priorities	Strongly Agree, Agree, Neither Agree Nor Disagree, Disagree, Strongly Disagree, or Do Not Know.
(9) The work I do is important	Strongly Agree, Agree, Neither Agree Nor Disagree, Disagree, Strongly Disagree, or Do Not Know.

Employee survey questions	Employee response choices
(10) Physical conditions (for example, noise level, temperature, lighting, cleanliness in the workplace) allow employees to perform their jobs well.	Strongly Agree, Agree, Neither Agree Nor Disagree, Disagree, Strongly Disagree, or Do Not Know.
Performance Culture	
(11) Promotions in my work unit are based on merit	Strongly Agree, Agree, Neither Agree Nor Disagree, Disagree, Strongly Disagree, or Do Not Know.
(12) In my work unit, steps are taken to deal with a poor performer who cannot or will not improve.	Strongly Agree, Agree, Neither Agree Nor Disagree, Disagree, Strongly Disagree, or Do Not Know.
(13) Creativity and innovation are rewarded	Strongly Agree, Agree, Neither Agree Nor Disagree, Disagree, Strongly Disagree, or Do Not Know.
(14) In my work unit, differences in performance are recognized in a meaningful way.	Strongly Agree, Agree, Neither Agree Nor Disagree, Disagree, Strongly Disagree, or Do Not Know.
(15) My performance appraisal is a fair reflection of my performance	Strongly Agree, Agree, Neither Agree Nor Disagree, Disagree, Strongly Disagree, or Do Not Know.
(16) Discussions with my supervisor/team leader about my performance are worthwhile.	Strongly Agree, Agree, Neither Agree Nor Disagree, Disagree, Strongly Disagree, or Do Not Know.
(17) Managers/supervisors/team leaders work well with employees of different backgrounds.	Strongly Agree, Agree, Neither Agree Nor Disagree, Disagree, Strongly Disagree, or Do Not Know.
Leadership	
(18) I have a high level of respect for my organization's senior leaders	Strongly Agree, Agree, Neither Agree Nor Disagree, Disagree, Strongly Disagree, or Do Not Know.
(19) In my organization, leaders generate high levels of motivation and commitment in the workforce.	Strongly Agree, Agree, Neither Agree Nor Disagree, Disagree, Strongly Disagree, or Do Not Know.
(20) Managers review and evaluate the organization's progress toward meeting its goals and objectives.	Strongly Agree, Agree, Neither Agree Nor Disagree, Disagree, Strongly Disagree, or Do Not Know.
(21) Employees are protected from health and safety hazards on the job.	Strongly Agree, Agree, Neither Agree Nor Disagree, Disagree, Strongly Disagree, or Do Not Know.
(22) My organization has prepared employees for potential safety and security threats.	Strongly Agree, Agree, Neither Agree Nor Disagree, Disagree, Strongly Disagree, or Do Not Know.
Job Satisfaction	
(23) How satisfied are you with your involvement in decisions that affect your work?	Very Satisfied, Satisfied, Neither Satisfied Nor Dissatisfied, Dissatisfied, or Very Dissatisfied.
(24) How satisfied are you with the recognition you receive for doing a good job?	Very Satisfied, Satisfied, Neither Satisfied Nor Dissatisfied, Dissatisfied, or Very Dissatisfied.
(25) How satisfied are you with the policies and practices of your senior leaders?	Very Satisfied, Satisfied, Neither Satisfied Nor Dissatisfied, Dissatisfied, or Very Dissatisfied.
(26) How satisfied are you with the training you receive for your present job?	Very Satisfied, Satisfied, Neither Satisfied Nor Dissatisfied, Dissatisfied, or Very Dissatisfied.
(27) Considering everything, how satisfied are you with your job?	Very Satisfied, Satisfied, Neither Satisfied Nor Dissatisfied, Dissatisfied, or Very Dissatisfied.
(28) Considering everything, how satisfied are you with your pay?	Very Satisfied, Satisfied, Neither Satisfied Nor Dissatisfied, Dissatisfied, or Very Dissatisfied.

§ 250.302 Availability of results.

(a) Each agency will make the results of its annual survey available to the public and post the results on its Web site, unless the agency head determines that doing so would jeopardize or negatively impact national security. The posted survey results will include the following:

(1) The agency's evaluation of its survey results;

(2) How the survey was conducted;

(3) Description of the employee sample, unless all employees are surveyed;

(4) The survey questions and response choices with the prescribed questions identified;

(5) The number of employees surveyed and number of survey respondents; and

(6) The number of respondents for each survey question and each response choice.

(b) Data must be collected by December 31 of each calendar year. Each agency must post the beginning and ending dates of its employees survey and either the survey results described in paragraph (a) or a statement noting the decision not to post no later than 120 days after the agency completes survey administration. OPM may extend this date in unusual circumstances.

(c) Each agency must submit its survey results to OPM no later than 120 days after the agency completes survey administration.

[FR Doc. 05–18374 Filed 9–15–05; 8:45 am]

BILLING CODE 6325–39–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Docket Number TM–04–01]

RIN 0581–AC35

National Organic Program (NOP): Proposed Amendments to the National List of Allowed and Prohibited Substances (Crops and Processing)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances

(National List) regulations to reflect recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) from November 15, 2000, through March 3, 2005. Consistent with the recommendations from the NOSB, this proposed rule would add fifteen substances, along with any restrictive annotations, to the National List. This proposed rule would also amend the mailing address for where to file a Certification or Accreditation appeal.

DATES: Comments must be received by November 15, 2005.

ADDRESSES: Interested persons may comment on this proposed rule using the following procedures:

- Mail: Comments may be submitted by mail to: Arthur Neal, Director of Program Administration, National Organic Program, USDA–AMS–TMP–NOP, 1400 Independence Ave., SW., Room 4008–So., Ag Stop 0268, Washington, DC 20250.
- E-mail: Comments may be submitted via the Internet to: *National.List@usda.gov.*
- Internet: *http://www.regulations.gov.*
- Fax: Comments may be submitted by fax to: (202) 205–7808.
- Written comments on this proposed rule should be identified with the docket number TMD–04–01. Commenters should identify the topic and section number of this proposed rule to which the comment refers.
- Clearly indicate if you are for or against the proposed rule or some portion of it and your reason for it. Include recommended language changes as appropriate.
- Include a copy of articles or other references that support your comments. Only relevant material should be submitted.

It is our intention to have all comments to this proposed rule, whether submitted by mail, e-mail, or fax, available for viewing on the NOP homepage. Comments submitted in response to this proposed rule will be available for viewing in person at USDA–AMS, Transportation and Marketing, Room 4008-South Building, 1400 Independence Ave., SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this proposed rule are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Arthur Neal, Director of Program Administration, Telephone: (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Secretary established, within the NOP [7 CFR part 205], the National List regulations (§§ 205.600 through 205.607). The National List regulations identify synthetic substances and ingredients that are allowed and nonsynthetic (natural) substances and ingredients that are prohibited for use in organic production and handling. Under the authority of the Organic Foods Production Act of 1990 (OFPA), as amended, (7 U.S.C. 6501 *et seq.*), the National List can be amended by the Secretary based on proposed amendments developed by the NOSB. Since established, the National List has been amended twice, October 31, 2003 (68 FR 61987), and November 3, 2003 (68 FR 62215).

This proposed rule would amend the National List to reflect recommendations submitted to the Secretary by the NOSB from November 15, 2000, through March 3, 2005. Between the specified time period, the NOSB has recommended that the Secretary add four substances to § 205.601 and eleven substances to § 205.605 of the National List regulations. This proposed rule would also amend the mailing address for where to file a Certification or Accreditation appeal pursuant to § 205.681(d).

II. Overview of Proposed Amendments

The following provides an overview of the proposed amendments to designated sections of the National List regulations:

Section 205.601 Synthetic Substances Allowed for Use in Organic Crop Production

This proposed rule would amend paragraph (m)(2) of § 205.601 of the regulations by adding the following substances:

Glycerine oleate (Glycerol monooleate) (CAS #s 25496–72–4; 111–03–5; 37220–82–9)—for use only until December 31, 2006. Glycerine oleate was petitioned to be used as an anti-foaming agent (defoamer) in organic crop production. Glycerine oleate is a clear amber or pale yellow liquid that is insoluble in water, slightly soluble in cold alcohol, and soluble in hot alcohol, chloroform, ether, and petroleum ether. In crop production, Glycerin oleate would be used as an anti-foaming agent (defoamer) in micronized wettable Sulfur that is used to control scab and mildew in the production of apples, pears, grapes, and raisins. The function of Glycerine oleate in the micronized wettable Sulfur would be to enable the product to be mixed in a tank effectively and sprayed on crops evenly.

Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Environmental Protection Agency (EPA) has classified Glycerine oleate as a List 3 inert (Inerts of Unknown Toxicity). Under the Food and Drug Administration (FDA), Glycerin monooleate (a synonym for Glycerin oleate) has been classified as a substance that is Generally Recognized As Safe (GRAS) for food production (21 CFR 184.1323).

The NOSB, at its May 13–14, 2003, meeting in Austin, TX, recommended adding Glycerine oleate to § 205.601(m)(2) of the National List regulations. In this open meeting, the NOSB evaluated Glycerine oleate against the evaluation criteria of 7 U.S.C. 6517 and 6518 of the OFPA, received public comment, and concluded that the substance is consistent with the OFPA evaluation criteria; however, it recommended that Glycerine oleate be added to the National List regulations, for use in crop production, only until December 31, 2006.

The normal time period for the use of a substance under the NOP regulations is 5 years, beginning the date the substance appears in the National List regulations. The NOSB recommended the early expiration date of December 31, 2006, because of the present efforts of the Environmental Protection Agency (EPA) to reclassify inerts on List 2 (Potentially Toxic Inert Ingredients/High Priority for Testing Inerts) and List 3 (Inerts of Unknown Toxicity) to either List 1 (Inert Ingredients of Toxicological Concern) or List 4 (Inerts of Minimal Concern) by December 31, 2006. With respect to the use of EPA regulated inert ingredients in organic crop and livestock production, only substances included on EPA's List 4 are categorically allowed on the National List (§ 205.601(m)(i)); all other EPA inert ingredients must be listed individually. Glycerine oleate is a List 3 inert; the NOSB anticipates that EPA will conclude its reclassification of Glycerine oleate to either a List 1 or List 4 status by December 31, 2006. If Glycerine oleate is reclassified as a List 1 inert, it will be prohibited for use as an inert ingredient for organic crop production. If Glycerin oleate is reclassified as a List 4 inert, then it will automatically continue to be allowed for use in organic crop production as an inert ingredient. In addition, if EPA does not complete its reclassification of

Glycerine oleate by December 31, 2006, the substance will be prohibited for use in organic crop production beginning on January 1, 2007.

Therefore, in response to the NOSB recommendation regarding the use of Glycerine oleate in organic crop production, the Secretary accepts the NOSB recommendation and proposes to amend § 205.601(m)(2) of the National List regulation as follows:

Glycerine oleate (Glycerol monooleate) (CAS #s 25496–72–4; 111–03–5; 37220–82–9)—for use only until December 31, 2006.

Tetrahydrofurfuryl alcohol (CAS # 97–99–4)—for use only until December 31, 2006. Tetrahydrofurfuryl alcohol was petitioned for use as an inert pesticidal ingredient for use in organic crop production. Tetrahydrofurfuryl alcohol is a clear, colorless liquid that is used extensively in various industries as a high-purity, water miscible solvent, and as a chemical intermediate. If released to soil, Tetrahydrofurfuryl alcohol is expected to exhibit high solubility.

Under FIFRA, the EPA has registered Tetrahydrofurfuryl alcohol as a List 3 inert (Inerts of Unknown Toxicity). In addition, the FDA has classified Tetrahydrofurfuryl alcohol as a direct food additive in synthetic flavoring substances (21 CFR 172.515) and an indirect food additive in adhesives and the manufacture of paper and paper adjuvants (21 CFR 175.105 and 176.210).

The NOSB, at its May 13–14, 2003, meeting in Austin, TX, recommended adding Tetrahydrofurfuryl alcohol to § 205.601(m)(2) of the National List regulations. In this open meeting, the NOSB evaluated Tetrahydrofurfuryl alcohol against the evaluation criteria of 7 U.S.C. 6517 and 6518 of the OFPA, received public comment, and concluded that the substance is consistent with the OFPA evaluation criteria; however, it recommended that Tetrahydrofurfuryl alcohol be added to the National List regulations, for use in crop production, only until December 31, 2006.

The normal time period for the use of a substance under the NOP regulations is five years, beginning the date the substance appears in the National List regulations. The NOSB recommended the early expiration date of December 31, 2006, because of the present efforts of the EPA to reclassify inerts on List 2 (Potentially Toxic Inert Ingredients/ High Priority for Testing inerts) and List 3 (Inerts of Unkown Toxicity) to either List 1 (Inert Ingredients of Toxicological Concern) or List 4 (Inerts of Minimal Concern) by December 31, 2006. With respect to the use of EPA regulated inert ingredients in organic crop and livestock production, only substances included on EPA's List 4 are categorically allowed on the National List (§ 205.601(m)(i)); all other EPA inert ingredients must be listed individually. Tetrahydrofurfuryl alcohol is a List 3 inert; the NOSB anticipates that EPA will conclude its reclassification of Tetrahydrofurfuryl alcohol to either a List 1 or List 4 status by December 31, 2006. If Tetrahydrofurfuryl alcohol is reclassified as a List 1 inert, it will be prohibited for use as an inert ingredient for organic crop production. If Tetrahydrofurfuryl alcohol is reclassified as a List 4 inert, then it will automatically continue to be allowed for use in organic crop production as an inert ingredient. In addition, if EPA does not complete its reclassification of Tetrahydrofurfuryl alcohol by December 31, 2006, the substance will be prohibited for use in organic crop production beginning on January 1, 2007.

Therefore, in response to the NOSB recommendation regarding the use of Tetrahydrofurfurly alcohol in organic crop production, the Secretary accepts the NOSB recommendation and proposes to amend § 205.601(m)(2) of the National List regulation as follows:

Tetrahydrofurfurly alcohol (CAS # 97–99–4)—for use only until December 31, 2006.

Hydrogen chloride (CAS # 7647–01–0)—for de-linting cotton seed for planting. Hydrogen chloride was petitioned for use as a synthetic to delint cotton seed for planting in organic crop production. Hydrogen chloride is a colorless to slightly yellow gas with a pungent, irritating odor. It is very soluble in water and readily soluble in alcohol and ether. Hydrogen chloride has been classified by the FDA as a substance that is GRAS when used as a buffer and neutralizing agent in accordance with good manufacturing or feeding practice (21 CFR 582.1057). In delinting cotton seeds intended for planting organic acreage, Hydrogen chloride is released into a delinting machine that contains linted cotton seeds. Seed is exposed to the Hydrogen chloride for about eight to ten minutes to weaken the lint and is then sent through buffers to remove the weakened lint from the seed. After delinting, a neutralizing agent (often Calcium carbonate) is used to prevent acid damage to the seed.

The NOSB, at its April 28–30, 2004, meeting in Chicago, IL, recommended adding Hydrogen chloride to § 205.601 of the National List regulations. In this open meeting, the NOSB evaluated Hydrogen chloride against the evaluation criteria of 7 U.S.C. 6517 and 6518 of the OFPA, received public comment, and concluded that the substance is consistent with the OFPA evaluation criteria. Therefore, in response to the NOSB recommendation regarding the use of Hydrogen chloride in organic crop production, the Secretary accepts the NOSB recommendation and proposes to amend § 205.601 of the National List regulations by adding (1) a new paragraph (n), Seed preparations, and (2) Hydrogen chloride as follows:

(n) Seed preparations.

Hydrogen chloride (CAS # 7647–01–0)—for de-linting cotton seed for planting.

Ferric phosphate (CAS # 10045–86–0). Ferric phosphate was petitioned for use as a pesticide (molluscicide) to bait slugs and snails in organic crop production. It is an odorless, yellowish-white powder that is not very soluble in water. Ferric phosphate is normally applied to soil as part of a pellet that includes a wheat-based bait to attract snails and slugs. After the pellets are consumed, Ferric phosphate interferes with calcium metabolism in the digestive tract of the snails and slugs, causing them to stop eating. Shortly thereafter, the snails and slugs die.

Under the FIFRA, the EPA has registered ferric phosphate as a biochemical molluscicide that targets a wide range of slugs and snails (63 FR 43936). In assessing risks to human health, EPA has concluded that there are no known or expected adverse effects to humans from the use of ferric phosphate. In assessing risks to the environment, the EPA has concluded that there are no known or expected harmful effects of the use of Ferric phosphate on the environment if users follow the application rates and use directions on the label. In addition to the assessments of the EPA, the FDA has classified Ferric phosphate as a substance that is GRAS for food use (21 CFR 184.1301).

The NOSB, at its February 28–March 3, 2005, meeting in Washington, DC, recommended adding Ferric phosphate to § 205.601(h) of the National List regulations without restriction. In this open meeting, the NOSB evaluated Ferric phosphate against the evaluation criteria of 7 U.S.C. 6517 and 6518 of the OFPA, received public comment, and concluded that the substance is consistent with the OFPA evaluation criteria. Therefore, in response to the NOSB recommendation regarding the use of Ferric phosphate in organic crop production, the Secretary accepts the NOSB recommendation and proposes to

amend § 205.601(h) of the National List regulations as follows:

Ferric phosphate (CAS # 10045–86–0).

Section 205.605 Nonagricultural (Nonorganic) Substances Allowed as Ingredients in or on Processed Products Labeled as ''Organic'' or ''Made With Organic (Specified Ingredients or Food Group(s))''

This proposed rule would amend § 205.605 (a) of the regulations by adding the following substances:

Egg white lysozyme (CAS # 9001–63–2). Egg white lysozyme was petitioned for use as an enzyme in organic processing. It is a white powder with no distinct odor. It is readily soluble in water and practically insoluble in alcohol, chloroform, and ether. Egg white lysozyme is considered to be GRAS by the FDA for use as an antimicrobial agent in casings for frankfurters and on cooked meat and poultry products. Egg white lysozyme is used in casings for frankfurters at a concentration of 2.5 milligram (mg) lysozyme per pound (lb) of frankfurter (equivalent to 5.5 mg Lysozyme per kilogram (kg) of food) and in cooked meat and poultry products sold as ready-to-eat at a concentration of 2.0 mg of Lysozyme per lb of cooked meat or poultry product (equivalent to 4.4 mg of Lysozyme per kg of food). The FDA acknowledged in GRAS Notice No. (GRN) 000064 that it had no question, at the time of review, that Egg white lysozyme is GRAS under the intended conditions of use; provided, that the ingredient statement of food products that contain Egg white lysozyme contain the name ''Egg white lysozyme'' to identify the source of the protein.

The NOSB, at its May 13–14, 2003, meeting in Austin, TX, recommended adding Egg white lysozyme to § 205.605(a) of the National List regulations without restriction. In this open meeting, the NOSB evaluated Egg white lysozyme against the evaluation criteria of 7 U.S.C. 6517 and 6518 of the OFPA, received public comment, and concluded that the substance is consistent with the OFPA evaluation criteria. Therefore, in response to the NOSB recommendation regarding the use of Egg white lysozyme in organic handling, the Secretary accepts the NOSB recommendation and proposes to amend § 205.605(a) of the National List regulations as follows:

Egg white lysozyme (CAS # 9001–63–2).

L-Malic acid (CAS # 97–67–6). DL-Malic acid was originally petitioned for use as a synthetic processing aid in organic handling. It is a white or colorless powder with no odor. It is readily biodegradable in water and in soil. DL-Malic acid is considered to be GRAS by FDA (21 CFR 184.1069). It is a processing aid that is used in bottled iced tea, dry mix beverages, carbonated beverages, bakery products, fruit juices, candies, gelatins, desserts, frozen specialties, sports drinks, and other food products.

The NOSB, at its May 13–14, 2003, meeting in Austin, TX, evaluated DL-Malic acid in an open meeting, received public comment, and concluded that the substance was not consistent with the evaluation criteria of 7 U.S.C. 6517 and 6518 of the OFPA. This determination was made because of an identified available natural alternative, L-Malic acid. As a result of having identified a natural alternative to DL-malic acid, the NOSB asked the petitioner whether L-Malic acid, a natural, could be substituted for DL-Malic acid for inclusion on the National List. The petitioner concurred and the NOSB recommended L-Malic acid for inclusion in section 205.605(a) of the National List. Therefore, in response to the NOSB recommendation regarding the use of L-Malic acid in organic handling, the Secretary accepts the NOSB recommendation and proposes to amend § 205.605 (a) of the National List regulations as follows:

L-Malic acid (CAS # 97–67–6).

Microorganisms—any food grade bacteria, fungi, and other microorganisms. Seed mold, a microorganism, was petitioned for use as a processing aid in organic handling. Seed mold is used as a culture starter in food processing. In the evaluation of seed mold, the NOSB recognized that they had previously evaluated and determined other types of food-grade microorganisms (*e.g.*, dairy cultures and yeast) and certain by-products derived from them (*e.g.*, enzymes) to be consistent with OFPA criteria and the NOP regulations. These microorganisms are already included on the National List.

The NOSB acknowledged that there are many species of food-grade microorganisms that are used in food processing that could be petitioned for use in organic handling. As a result, a decision was made by the NOSB to evaluate the categorical use of food-grade microorganisms in organic handling and recommend their inclusion in section 205.605(a) of the National List. This decision would obviate the need for future review and evaluation of other individual food grade microorganisms that exhibit similar characteristics and functions as those already approved for use on the National List.

At its May 13–14, 2003, meeting in Austin, TX, the NOSB recommended adding microorganisms to § 205.605(a) of the National List regulations without restriction. In this open meeting, the NOSB evaluated the categorical use of microorganisms in organic handling against 7 U.S.C. 6517 and 6518 of the OFPA, received public comment, and concluded that the use of microorganisms in organic handling is consistent with the evaluation criteria. Therefore, in response to the NOSB recommendation regarding the use of microorganisms in organic handling, the Secretary accepts the NOSB recommendation and proposes to amend § 205.605(a) of the National List regulations as follows:

Microorganisms—any food grade bacteria, fungi, and other microorganisms.

This proposed rule would also amend § 205.605(b) of the regulations by adding the following substances:

Activated charcoal (CAS #s 7440–44–0; 64365–11–3)—only from vegetative sources; for use only as a filtering aid in handling agricultural products labeled ''made with organic (specified ingredients or food group(s));'' prohibited in handling agricultural products labeled ''organic.'' Activated charcoal was petitioned for use as a processing aid in organic handling. Activated charcoal is a solid, porous, black carbonaceous material that is used as a decolorizing agent, taste- and odor-removing agent, and purification agent in food processing. It is also used for the treatment of water, including potable water. Activated charcoal is acknowledged by FDA in 21 CFR 173.25(b)(1)(ii) to be an allowed substance for use in ion exchange. It is also recognized as an indirect food additive in closures with sealing gaskets for food containers (21 CFR 177.1210).

At its September 17–19, 2002, meeting in Austin, TX, the NOSB recommended adding activated charcoal to § 205.605(b) of the National List regulations for organic handling, with the restrictions that the substance: (1) Comes from vegetative sources only; and (2) only be used as a filtering aid. In this open meeting, the NOSB evaluated the use of activated charcoal against the evaluation criteria of § 205.600(b) of the National List regulations, received public comment, and concluded that the use of activated charcoal in organic handling is consistent with the evaluation criteria.

Therefore, in response to the NOSB recommendation regarding the use of activated charcoal in organic handling,

the Secretary proposes to amend § 205.605(b) of the National List regulations to allow activated charcoal as a synthetic ingredient in or on processed products labeled as ''made with organic (specified ingredients or food group(s))'' as follows:

Activated charcoal (CAS #s 7440–44–0; 64365–11–3)—only from vegetative sources; for use only as a filtering aid in handling agricultural products labeled ''made with organic (specified ingredients or food group(s));'' prohibited in handling agricultural products labeled ''organic.''

Ammonium hydroxide (CAS # 1336–21–6)—for use only as a boiler water additive until October 21, 2005. Restricted to handling agricultural products labeled ''made with organic (specified ingredients or food group(s));'' prohibited in handling agricultural products labeled ''organic.'' Ammonium hydroxide was petitioned as a boiler water additive in organic handling. It is a colorless liquid with an intense odor. It is used in preventing the corrosion of boiler equipment used in food processing. Ammonium hydroxide is considered to be GRAS by FDA and allowed as a boiler water additive under 21 CFR 184.1139.

At its October 15–17, 2001, meeting in Washington, DC, the NOSB recommended adding Ammonium hydroxide to § 205.605(b) of the National List regulations, with the restriction that it can only be used in organic handling until October 21, 2005. In this open meeting, the NOSB evaluated the use of Ammonium hydroxide against the evaluation criteria of § 205.600(b) of the National List regulations, received public comment, and concluded that the use of Ammonium hydroxide in organic handling is consistent with the evaluation criteria.

Although the NOSB determined Ammonium hydroxide to be consistent with the evaluation criteria of § 205.600(b), it recommended an early expiration date of October 21, 2005, for the use of the substance, to encourage the organic processing industry to find an alternative substance to use in place of the Ammonium hydroxide. The normal time period for the use of a substance under the NOP regulations is 5 years, beginning the date the substance appears in the National List regulations.

Therefore, in response to the NOSB recommendation regarding the use of Ammonium hydroxide in organic handling, the Secretary proposes to amend § 205.605(b) of the National List regulations to allow Ammonium hydroxide as a synthetic ingredient in or on processed products labeled as ''made with organic (specified ingredients or food group(s))'' as follows:

Ammonium hydroxide (CAS # 1336–21–6)—for use only as a boiler water additive until October 21, 2005. Restricted to handling agricultural products labeled ''made with organic (specified ingredients or food group(s));'' prohibited in handling agricultural products labeled ''organic.''

Cyclohexylamine (CAS # 108–91–8)—for use only as a boiler water additive for packaging sterilization. Restricted to handling agricultural products labeled ''made with organic (specified ingredients or food group(s));'' prohibited in handling agricultural products labeled ''organic.'' Cyclohexylamine was petitioned as a boiler water additive in organic handling. Cyclohexylamine is a colorless to yellow liquid that has a strong, fishy odor. It is miscible with water and with common organic solvents. It is used to prevent the corrosion of boiler equipment used in food processing. Cyclohexylamine is approved for use as a secondary direct food additive and boiler water additive by FDA under 21 CFR 173.310.

At its October 15–17, 2001, meeting in Washington, DC, the NOSB recommended adding Cyclohexlamine to § 205.605(b) of the National List regulations for organic handling, with the restriction that it be used as a boiler water additive for packaging sterilization only. In this open meeting, the NOSB evaluated the use of Cyclohexlamine against the evaluation criteria of § 205.600(b) of the National List regulations, received public comment, and concluded that the use of Cyclohexlamine in organic handling is consistent with the evaluation criteria.

Therefore, in response to the NOSB recommendation regarding the use of Cyclohexlamine in organic handling, the Secretary proposes to amend § 205.605(b) of the National List regulations to allow Cyclohexlamine as a synthetic ingredient in or on processed products labeled as ''made with organic (specified ingredients or food group(s))'' as follows:

Cyclohexylamine (CAS # 108–91–8)—for use only as a boiler water additive for packaging sterilization. Restricted to handling agricultural products labeled ''made with organic (specified ingredients or food group(s));'' prohibited in handling agricultural products labeled ''organic.''

Diethylaminoethanol (CAS # 100–37–8)—for use only as a boiler water additive for packaging sterilization; restricted to handling agricultural products labeled ''made with organic (specified ingredients or food group(s));'' prohibited for use in handling agricultural products labeled ''organic.'' Diethlaminoethanol was petitioned as a boiler water additive in organic handling. Diethylaminoethanol is a colorless liquid with a weak ammonia odor. It is hygroscopic soluble in water, alcohol, Acetone, Benzene, and Petroleum ether. Diethlaminoethanol inhibits corrosion in boiler chemical systems in return lines, by neutralizing Carbonic acid in steam and steam condensates, and by scavenging free Oxygen. It is used in conjunction with Cyclohexylamine, Morpholine, and Octadecylamine. Diethylaminoethanol is approved for use as a secondary direct food additive and boiler water additive by FDA under 21 CFR 173.310.

At its May 6–8, 2002, meeting in Austin, TX, the NOSB recommended adding Diethylaminoethanol to § 205.605(b) of the National List regulations for organic handling, with the restriction that it be used as a boiler water additive for packaging sterilization only. In this open meeting, the NOSB evaluated the use of Diethylaminoethanol against the evaluation criteria of § 205.600(b) of the National List regulations, received public comment, and concluded that the use of Diethylaminoethanol in organic handling is consistent with the evaluation criteria.

Therefore, in response to the NOSB recommendation regarding the use of Diethylaminoethanol in organic handling, the Secretary proposes to amend § 205.605(b) of the National List regulations to allow Diethylaminoethanol as a synthetic ingredient in or on processed products labeled as ''made with organic (specified ingredients or food group(s))'' as follows:

Diethylaminoethanol (CAS # 100–37–8)—for use only as a boiler water additive for packaging sterilization. Restricted to handling agricultural products labeled ''made with organic (specified ingredients or food group(s));'' prohibited for use in handling agricultural products labeled ''organic.''

Octadecylamine (CAS # 124–30–1)—for use only as a boiler water additive for packaging sterilization. Restricted to handling agricultural products labeled ''made with organic (specified ingredients or food group(s));'' prohibited for use in handling agricultural products labeled ''organic.'' Octadecylamine was petitioned for use as a boiler water additive to prevent corrosion of boiler equipment and distribution lines. Octadecylamine is an

opaque, off-white liquid with ammoniacal odor, insoluble in water but soluble in alcohol, Ether, Benzene; very soluble in Chloroform; and miscible in Acetone. Octadecylamine is approved for use as a secondary direct food additive and boiler water additive by FDA under 21 CFR 173.310.

At its October 15–17, 2001, meeting in Washington, DC, the NOSB recommended adding Octadecylamine to § 205.605(b) of the National List regulations for organic handling, with the restriction that it be used as a boiler water additive for packaging sterilization only. In this open meeting, the NOSB evaluated the use of Octadecylamine against the evaluation criteria of § 205.600(b) of the National List regulations, received public comment, and concluded that the use of Octadecylamine in organic handling is consistent with the evaluation criteria.

Therefore, in response to the NOSB recommendation regarding the use of Octadecylamine in organic handling, the Secretary proposes to amend § 205.605(b) of the National List regulations to allow Octadecylamine as a synthetic ingredient in or on processed products labeled as ''made with organic (specified ingredients or food group(s))'' as follows:

Octadecylamine (CAS # 124–30–1)—for use only as a boiler water additive for packaging sterilization. Restricted to handling agricultural products labeled ''made with organic (specified ingredients or food group(s));'' prohibited for use in handling agricultural products labeled ''organic.''

Peracetic acid/Peroxyacetic acid (CAS # 79–21–0)—for use in wash and/or rinse water according to FDA limitations. For use as a sanitizer on food contact surfaces. Restricted to use in handling agricultural products labeled ''made with organic (specified ingredients or food group(s));'' prohibited in agricultural products labeled ''organic.'' Peracetic acid was petitioned as an anti-microbial water treatment additive and/or as an equipment sanitizer or disinfectant. Its most common use in food processing and handling is as a sanitizer for food contact surfaces and as a disinfectant for fruits, vegetables, meats, and eggs. Other uses of Peracetic acid include removing deposits, suppressing odor, and stripping biofilms from food contact surfaces. Peracetic acid is a clear colorless liquid with no foaming capability, and has a strong pungent odor. It is approved by FDA as a secondary direct food additive used in the washing or peeling of fruits and vegetables (21 CFR 173.315). It is also approved for use as an indirect food additive, sanitizer, under 21 CFR 178.1010.

At its November 15–17, 2000, meeting in Washington, DC, the NOSB recommended adding Peracetic acid to § 205.605(b) of the National List regulations for organic handling, with the restrictions that it be allowed: (1) For direct food contact only in wash and/or rinse water; and (2) as a sanitizer on surfaces in contact with organic food. In this open meeting, the NOSB evaluated the use of Peracetic acid against the evaluation criteria of § 205.600(b) of the National List regulations, received public comment, and concluded that the use of Peracetic acid in organic handling is consistent with the evaluation criteria.

In accepting the NOSB recommendation to allow Peracetic acid in organic handling, this proposed rule proposes language for including Peracetic acid on the National List that differs from the original NOSB recommendation. The original wording of the NOSB recommendation submitted to the Secretary was as follows: ''Peracetic acid—for direct food contact only in wash and/or rinse water, as a sanitizer on surfaces in contact with organic food.'' The NOP did not elect to use that language because of the confusion the language could cause when referencing the use of Peracetic acid (Peroxyacetic acid) against FDA regulations.

For instance, the recommended NOSB language references ''Peracetic acid'' as the common name of the substance, but FDA regulations reference ''Peroxyacetic acid,'' in 21 CFR 173.315, for the washing or peeling of fruits and vegetables. Also, FDA regulations restrict the use of Peracetic acid/Peroxyacetic acid on fruits and vegetables that are not raw agricultural commodities. Based on this information, the NOP determined that the original NOSB recommendation could cause handlers that use Peracetic acid/Peroxyacetic acid to believe that the substance could be used on all agricultural products. As a result, this proposed rule attempts to limit confusion regarding the proposed use of Peracetic acid/Peroxyacetic acid in the handling of ''made with * * *'' products by including language that acknowledges the FDA use limitations.

Therefore, in response to the NOSB recommendation regarding the use of Peracetic acid/Peroxyacetic acid in organic handling, the Secretary proposes to amend § 205.605(b) of the National List regulations to allow Peracetic acid/Peroxyacetic acid as a synthetic ingredient in or on processed products labeled as ''made with organic (specified ingredients or food group(s))'' as follows:

Peracetic acid/Peroxyacetic acid (CAS # 79–21–0)—for use in wash and/or rinse water according to FDA limitations. For use as a sanitizer on food contact surfaces. Restricted to use in handling agricultural products labeled ''made with organic (specified ingredients or food group(s));'' prohibited in handling agricultural products labeled ''organic.''

Sodium acid pyrophosphate (CAS # 7758–16–9)—for use only as a leavening agent in agricultural products labeled ''made with organic (specified ingredients or food group(s));'' prohibited in handling agricultural products labeled ''organic.'' Sodium acid pyrophosphate was petitioned for use as a leavening agent in baked goods. It helps to control the release of Carbon dioxide that leavens baked goods. It can be either anhydrous or contain one or more molecules of water of hydration. The anhydrous forms are white, crystalline powders or granules. The hydrated forms occur as white or transparent crystals or granules. When used in accordance with good manufacturing practices, Sodium acid pyrophosphate is considered to be GRAS by FDA under 21 CFR 182.1087.

At its May 13–14, 2003, meeting in Austin, TX, the NOSB recommended adding Sodium acid pyrophosphate to § 205.605(b) of the National List regulations for organic handling, with the restriction that it only be used as a leavening agent. In this open meeting, the NOSB evaluated Sodium acid pyrophosphate against the evaluation criteria of § 205.600(b) of the National List regulations, received public comment, and concluded that the use of Sodium acid pyrophosphate in organic handling is consistent with the evaluation criteria.

Therefore, in response to the NOSB recommendation regarding the use of Sodium acid pyrophosphate in organic handling, the Secretary proposes to amend § 205.605(b) of the National List regulations to allow Sodium acid pyrophosphate as a synthetic ingredient in or on processed products labeled as ''made with organic (specified ingredients or food group(s))'' as follows:

Sodium acid pyrophosphate (CAS # 7758–16–9)—for use only as a leavening agent in agricultural products labeled ''made with organic (specified ingredients or food group(s));'' prohibited in handling agricultural products labeled ''organic.''

Tetrasodium pyrophosphate (CAS # 7722–88–5)—for use only in meat analog products labeled ''made with

organic (specified ingredients or food group(s));'' prohibited in handling agricultural products labeled ''organic.'' In a proposed rule, published May 22, 2003 (68 FR 27941), § 205.605(b) of the regulations was proposed to be amended by adding Tetrasodium pyrophosphate to be used only in textured meat analog products. In response to the proposal to add Tetrasodium pyrophospate on the National List regulations, we received six public comments, three in favor of and three opposed to its inclusion. Regarding the comments that opposed the inclusion of Tetrasodium pyrophosphate on the National List regulations, commenters expressed concern that the recommended annotation was vague, confusing, undefined and needed clarification. They stated that the primary use of Tetrasodium pyrophosphate, as proposed, appeared to be to create texture that is similar to a meat product. They also asserted that such a use would be in direct conflict with the criterion in § 205.600(b)(4) of the regulations that emphasizes ''the substance's primary use is not as a preservative or to recreate or improve flavors, colors, textures, or nutritive value lost during processing, except where the replacement of nutrients is required by law.''

Due to the merit of those comments, on March 3, 2003 (68 FR 62215), we did not add Tetrasodium pyrophosphate on the National List and referred the substance back to the NOSB for further deliberation as to whether the proposed use of Tetrasodium pyrophosphate conflicts with § 205.600 (b)(4) of the NOP regulations. Through further review and deliberation at their April 2004 meeting in Chicago, IL, the NOSB determined that the proposed use of Tetrasodium pyrophosphate did not conflict with § 205.600 (b)(4) of the NOP regulations. In response to the concerns of the commenters, the NOSB provided that the primary use of Tetrasodium pyrophosphate, as petitioned, is not to serve as a preservative, or to ''recreate'' flavor, color or texture. They acknowledged that the substance may be used to create texture; however, it is not being used to ''recreate'' texture, as is referenced in § 205.600 (b)(4) of the regulations. Rather, it is being proposed to add Tetrasodium pyrophosphate to § 205.605(b) of the National List regulations as follows:

Tetrasodium pyrophosphate (CAS # 7722–88–5)—for use only in meat analog products labeled ''made with organic (specified ingredients or food group(s));'' prohibited in handling agricultural products labeled ''organic.''

Section 205.681 Appeals

This proposed rule would amend § 205.681(d)(1) of the regulations by updating the mailing address for where to file a Certification or Accreditation appeal as follows:

Administrator, USDA, AMS, c/o NOP Appeals Staff, Stop 0203, Room 3529–S, 1400 Independence Avenue, SW., Washington, DC 20250–0203.

III. Related Documents

Seven notices were published regarding the meetings of the NOSB and its deliberations on recommendations and substances petitioned for amending the National List. Substances and recommendations included in this proposed rule were announced for NOSB deliberation in the following **Federal Register** Notices: (1) 65 FR 64657, October 30, 2000, (Peracetic acid); (2) 66 FR 48654, September 21, 2001, (Ammonium hydroxide, Cyclohexlamine, and Octadecylamine); (3) 67 FR 19375, April 19, 2002, (Diethylaminoethanol); (4) 67 FR 54784, August 26, 2002, (Activated charcoal); (5) 68 FR 23277, May 1, 2003, (Egg white lysozyme, Glycerine oleate, L-Malic acid, Microorganisms, Sodium acid pyrophosphate and Tetrahydrofurfuryl alcohol); (6) 69 FR 18036, April 6, 2004, (Hydrogen Chloride, and Tetrasodium pyrophosphate); and (7) 70 FR 7224, February 11, 2005, (Ferric phosphate).

IV. Statutory and Regulatory Authority

The OFPA, as amended (7 U.S.C. 6501 *et seq.*), authorizes the Secretary to make amendments to the National List based on proposed amendments developed by the NOSB. Sections 6518(k)(2) and 6518(n) of OFPA authorizes the NOSB to develop proposed amendments to the National List for submission to the Secretary and establishes a petition process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List, respectively. The National List petition process is implemented under § 205.607 of the NOP regulations. The current petition process (65 FR 43259) can be accessed through the NOP Web site at *http://www.ams.usda.gov/nop.*

A. Executive Order 12866

This action has been determined to be non-significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This proposed rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under section 2115 of the OFPA (7 U.S.C. 6514) from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in section 2115(b) of the OFPA (7 U.S.C. 6514(b)). States are also preempted under sections 2104 through 2108 of the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to section 2108(b)(2) of the OFPA (7 U.S.C. 6507(b)(2)), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to section 2120(f) of the OFPA (7 U.S.C. 6519 (f)), this proposed rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspections Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

Section 2121 of the OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons

may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Pursuant to the requirements set forth in the RFA, the Agricultural Marketing Service (AMS) performed an economic impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000 (65 FR 80548). The AMS has also considered the economic impact of this action on small entities. The impact on entities affected by this proposed rule would not be significant. The effect of this proposed rule would be to allow the use of additional substances in agricultural production and handling. This action would relax the regulations published in the final rule and would provide small entities with more tools to use in day-to-day operations. The AMS concludes that the economic impact of this addition of allowed substances, if any, would be minimal and entirely beneficial to small agricultural service firms. Accordingly, USDA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Small agricultural service firms, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,000,000 and small agricultural producers are defined as those having annual receipts of less than $750,000. This proposed rule would have an impact on a substantial number of small entities.

The U.S. organic industry at the end of 2001 included nearly 6,600 certified crop and livestock operations, including organic production and handling operations, producers, and handlers. These operations reported certified acreage totaling more than 2.34 million acres, 72,209 certified livestock, and 5.01 million certified poultry. Data on the numbers of certified handling operations are not yet available, but likely number in the thousands, as they would include any operation that transforms raw product into processed products using organic ingredients. Growth in the U.S. organic industry has been significant at all levels. From 1997 to 2001, the total organic acreage grew by 74 percent; livestock numbers certified organic grew by almost 300 percent over the same period, and poultry certified organic increased by 2,118 percent over this time. Sales growth of organic products has been equally significant, growing on average around 20 percent per year. Sales of organic products were approximately $1 billion in 1993, but reached $15 billion in 2004. In addition, USDA has accredited 97 certifying agents who have applied to USDA to be accredited in order to provide certification services to producers and handlers. A complete list of names and addresses of accredited certifying agents may be found on the AMS NOP Web site, at *http://www.ams.usda.gov/nop.* AMS believes that most of these entities would be considered small entities under the criteria established by the SBA.

D. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, the existing information collection requirements for the NOP are approved under OMB number 0581–0191. No additional collection or recordkeeping requirements are imposed on the public by this proposed rule. Accordingly, OMB clearance is not required by section 350(h) of the Paperwork Reduction Act, or OMB's implementing regulation at 5 CFR part 1320.

E. General Notice of Public Rulemaking

This proposed rule reflects recommendations submitted to the Secretary by the NOSB and includes an amendment to the mailing address for where to file a Certification or Accreditation Appeal. The seven substances proposed to be added to the National List were based on petitions from the industry. The NOSB evaluated each petition using criteria in the OFPA. Because these substances are critical to organic production and handling operations, producers and handlers should be able to use them in their operations as soon as possible. A 60-day period for interested persons to comment on this rule is provided.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205, Subpart G is proposed to be amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

2. Section 205.601 is amended by:
a. Revising paragraph (h).
b. Revising paragraph (m)(2).
c. Adding a new paragraph (n).
d. Reserving paragraphs (o)–(z).
The revisions and additions read as follows:

§ 205.601 Synthetic substance allowed for use in organic crop production.

* * * * *

(h) As slug or snail bait. Ferric phosphate (CAS # 10045–86–0).

* * * * *

(m) * * *

(2) EPA List 3—Inerts of Unknown Toxicity allowed:

(i) Glycerine Oleate (Glycerol monooleate) (CAS #s 25496–72–4; 111–03–5; 37220–82–9)—for use only until December 31, 2006.

(ii) Inerts used in passive pheromone dispensers.

(iii) Tetrahydrofurfuryl alcohol (CAS # 97–99–4)—for use only until December 31, 2006.

(n) Seed preparations. Hydrogen chloride (CAS # 7647–01–0)—for delinting cotton seed for planting.

* * * * *

3. Section 205.605 is amended by:
a. Adding three materials to paragraph (a).
b. Adding 8 new substances to paragraph (b).
The additions read as follows:

§ 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as ''organic'' or ''made with organic (specified ingredients or food group(s)).''

* * * * *

(a) * * *

* * * * *

Egg white lysozyme (CAS # 9001–63–2)

* * * * *

L-Malic acid (CAS # 97–67–6).

* * * * *

Microorganisms—any food grade bacteria, fungi, and other microorganism.

* * * * *

(b) * * *

Activated charcoal (CAS #s 7440–44–0; 64365–11–3)—only from vegetative sources; for use only as a filtering aid in handling agricultural products labeled ''made with organic (specified ingredients or food group(s));'' prohibited in handling agricultural products labeled ''organic.''

* * * * *

Ammonium hydroxide (CAS # 1336–21–6)—for use only as a boiler water additive until October 21, 2005. Restricted to handling agricultural products labeled ''made with organic (specified ingredients or food group(s));'' prohibited in handling agricultural products labeled ''organic.''

* * * * *

Cyclohexylamine (CAS # 108–91–8)—for use only as a boiler water additive for packaging sterilization. Restricted to handling agricultural products labeled ''made with organic (specified ingredients or food group(s));'' prohibited in handling agricultural products labeled ''organic.''

Diethylaminoethanol (CAS # 100–37–8)—for use only as a boiler water additive for packaging sterilization. Restricted to handling agricultural products labeled ''made with organic (specified ingredients or food group(s));'' prohibited for use in handling agricultural products labeled ''organic.''

* * * * *

Octadecylamine (CAS # 124–30–1)—for use only as a boiler water additive for packaging sterilization. Restricted to handling agricultural products labeled ''made with organic (specified ingredients or food group(s));'' prohibited for use in handling agricultural products labeled ''organic.''

* * * * *

Peracetic acid/Peroxyacetic acid (CAS # 79–21–0)—for use in wash and/or rinse water according to FDA limitations. For use as a sanitizer on food contact surfaces. Restricted to use in handling agricultural products labeled ''made with organic (specified ingredients or food group(s));'' prohibited in handling agricultural products labeled ''organic.''

* * * * *

Sodium acid pyrophosphate (CAS # 7758–16–9)—for use only as a leavening agent in agricultural products labeled ''made with organic (specified ingredients or food group(s));'' prohibited in handling agricultural products labeled ''organic.''

* * * * *

Tetrasodium pyrophosphate (CAS # 7722–88–5)—for use only in meat analog products labeled ''made with organic (specified ingredients or food group(s));'' prohibited in handling agricultural products labeled ''organic.''

* * * * *

4. In § 205.681, paragraph (d)(1) is revised to read as follows:

§ 205.681 Appeals.

* * * * *

(d) * * * (1) Appeals to the Administrator must be filed in writing and addressed to: Administrator, USDA, AMS, c/o NOP Appeals Staff, Stop 0203, Room 3529–S, 1400 Independence Avenue, SW., Washington, DC 20250–0203

* * * * *

Dated: September 12, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–18381 Filed 9–15–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22423; Directorate Identifier 2005–NM–068–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200C and –200F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Boeing Model 747–200C and –200F series airplanes. The existing AD currently requires repetitive inspections to find fatigue cracking in the upper chord of the upper deck floor beams, and repair if necessary. For certain airplanes, the existing AD also provides an optional repair/modification, which extends certain repetitive inspection intervals. This proposed AD would reduce the compliance time for all initial inspections and reduce the repetitive interval for a certain inspection. This proposed AD is prompted by new reports of cracks in the upper deck floor beams occurring at lower flight cycles. We are proposing this AD to find and fix cracking in certain upper deck floor beams. Such cracking could extend and sever floor beams at a floor panel attachment hole location and could result in rapid decompression and loss of controllability of the airplane.

DATES: We must receive comments on this proposed AD by October 31, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: *Go to http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–22423; the directorate identifier for this docket is 2005–NM–068–AD.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–22423; Directorate Identifier 2005–NM–068–AD'' at the beginning of your comments. We specifically invite

comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System (DMS) receives them.

Discussion

On January 29, 2004, we issued AD 2004–03–11, amendment 39–13455 (69 FR 5920, February 9, 2004), for certain Boeing Model 747–200C and –200F series airplanes. That AD requires repetitive inspections to find fatigue cracking in the upper chord of certain upper deck floor beams, and repair if necessary. For certain airplanes, that AD also provides an optional repair/modification, which extends certain repetitive inspection intervals. That AD was prompted by a report of fatigue cracking of the station (STA) 340 upper deck floor beam. We issued that AD to find and fix cracking in certain upper deck floor beams. Such cracking could extend and sever floor beams at a floor panel attachment hole location and could result in rapid decompression and loss of controllability of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2004–03–11, we have received new reports of cracks in the upper deck floor beams on several airplanes. The airplanes had accumulated between 19,580 and 23,561 total flight cycles. In one case, the aft reinforcing strap of the upper chord of the floor beam at station 520 was found severed at 19,580 total flight cycles. Another airplane with 19,687 total flight cycles had significant cracks in the same area. The threshold for the initial inspection required by AD 2004–03–11 is 22,000 total flight cycles. Therefore, we have determined that the initial inspections and a certain repetitive inspection required by that AD need to be done earlier to detect cracks in the upper deck floor beams in a timely manner.

Relevant Service Information

We have reviewed Revision 1 of Boeing Alert Service Bulletin 747–53A2439, dated March 10, 2005. The inspections, repair, and optional repair/modification described in Revision 1 are essentially identical to those in the original issue, which is referenced in AD 2004–03–11 as the appropriate source of service information for the required actions. Revision 1 reduces the compliance time for all initial inspections and reduces the repetitive inspection interval for surface high frequency eddy current (HFEC) inspection of the upper deck floor beams (header beams) at STAs 440 and 520. The compliance time for accomplishing the inspection of repaired areas ranges between 5,000 and 15,000 flight cycles depending on the diameter of the fastener hole. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design that may be registered in the U.S. at some time in the future. We are proposing to supersede AD 2004–03–11. This proposed AD would continue to require repetitive inspections to find fatigue cracking in the upper chord of the upper deck floor beams, and repair if necessary. This proposed AD would also continue to provide, for certain airplanes, an optional repair/modification, which extends certain repetitive inspection intervals. This proposed AD would also reduce the compliance time for all initial inspections and reduce the repetitive interval for a certain inspection. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed under ''Differences Between the Proposed AD and Service Bulletin.''

Differences Between the Proposed AD and Service Bulletin

The service bulletin provides the following information in Note 9 of the Accomplishment Instructions: ''For the purposes of this service bulletin, do not count flight-cycles with a cabin pressure differential of 2.0 psi or less. However, any flight-cycle with momentary spikes in cabin pressure differential above 2.0 psi must be included as a full-pressure flight-cycle.'' We have determined that an adjustment of flight cycles due to a lower cabin differential pressure is not substantiated and will not be allowed for use in determining the flight cycle threshold for this proposed AD.

The service bulletin specifies that you may contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require you to repair those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization whom we have authorized to make those findings.

Although the Accomplishment Instructions of the service bulletin describe procedures for submitting inspection results to Boeing, this proposed AD would not require that action. We do not need this information from operators.

Change to Existing AD

This proposed AD would retain certain requirements of AD 2004–03–11. Since AD 2004–03–11 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2004–03–11	Corresponding requirement in this proposed AD
Paragraph (a)	Paragraphs (f) and (g).
Paragraph (b)	Paragraph (h).

Costs of Compliance

There are about 78 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 21 airplanes of U.S. registry.

The inspections that are required by AD 2004–03–11 and retained in this proposed AD take about 29 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the currently required inspections for U.S. airplanes is $39,585, or $1,885 per airplane, per inspection cycle.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–13455 (69 FR 5920, February 9, 2004) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2005–22423; Directorate Identifier 2005–NM–068–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by October 31, 2005.

Affected ADs

(b) This AD supersedes AD 2004–03–11, amendment 39–13455.

Applicability

(c) This AD applies to Boeing Model 747–200C and –200F series airplanes, certificated in any category, as listed in Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001.

Unsafe Condition

(d) This AD was prompted by new reports of cracks in the upper deck floor beams occurring at lower flight cycles. We are issuing this AD to find and fix cracking in certain upper deck floor beams, which could extend and sever floor beams at a floor panel attachment hole location and could result in rapid decompression and loss of controllability of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Requirements of AD 2004–03–11

Initial Compliance Time at a New Reduced Threshold

(f) At the earliest of the times specified in paragraphs (f)(1) through (f)(3) of this AD, do the inspection required by paragraph (g) of this AD.

(1) Before the accumulation of 22,000 total flight cycles, or within 1,000 flight cycles after March 15, 2004 (the effective date of AD 2004–03–11), whichever occurs later.

(2) For airplanes with 17,000 or more total flight cycles as of the effective date of this AD: Before the accumulation of 18,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later.

(3) For airplanes with fewer than 17,000 total flight cycles as of the effective date of this AD: Before the accumulation of 15,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.

Inspections at Reduced Intervals for Certain Floor Beams and Repair

(g) Do the applicable inspection to find fatigue cracking in the upper chord of the upper deck floor beams as specified in Part 1 (Open-Hole High Frequency Eddy Current (HFEC) Inspection Method) or Part 2 (Surface HFEC Inspection Method) of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001. Do the inspections per the service bulletin. As of the effective date of this AD, the actions must be done per the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 1, dated March 10, 2005.

(1) If any crack is found, before further flight, repair per Part 3 (Upper Chord Repair) of the Work Instructions of the service bulletin; except where the service bulletin specifies to contact Boeing for appropriate action, before further flight, repair according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to data meeting the certification basis of the airplane approved by an a Boeing Company Designated Engineering Representative (DER) or Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD. Do the applicable inspection of the repaired area per Part 1 of the Work Instructions of the service bulletin at the applicable time per Part 3 of the Work Instructions of the service bulletin, and repeat the applicable inspection at the applicable interval per Figure 1 of the service bulletin. As of the effective date of this AD, do the applicable inspection of the repaired area per Parts 1 and 6 of the Work Instructions of the service bulletin at the applicable time per Table 1 of Part 3 of the Work Instructions of the service bulletin, and repeat the applicable inspection thereafter at intervals not to exceed 3,000 flight cycles.

(2) If no crack is found, repeat the applicable inspection per paragraph (g) of this AD at the applicable time specified in paragraphs (g)(2)(i) through (g)(2)(iii) of this AD. As an option, accomplishment of paragraph (h)(1) or (h)(2) of this AD, before further flight, extends the threshold for the initiation of the repetitive inspections required by this paragraph.

(i) If the open-hole HFEC inspection method was used: Repeat that inspection at intervals not to exceed 3,000 flight cycles.

(ii) If the surface HFEC inspection method was used at stations 340 through 420 inclusive and station 500: Repeat that inspection at intervals not to exceed 750 flight cycles.

(iii) If the surface HFEC inspection method was used at stations 440 and 520: Repeat that inspection at the earlier of the times specified in paragraphs (g)(2)(iii)(A) and (g)(2)(iii)(B) of this AD, and thereafter at intervals not to exceed 250 flight cycles.

(A) Within 750 flight cycles since the last surface HFEC inspection required by paragraph (g) of this AD.

(B) Within 250 flight cycles after the effective date of this AD.

Optional Repair/Modification

(h) For airplanes on which the inspection required by paragraph (g) of this AD is done per Part 1 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001, or Revision 1, dated March 10, 2005; and on which no cracking is found: Accomplishment of the actions specified in either paragraph (h)(1) or (h)(2) of this AD extends the threshold for the initiation of the repetitive inspections required by paragraph (g)(2) of this AD. For airplanes on which the inspection required by paragraph (g) of this AD is done per Part 2 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001, or Revision 1, dated March 10, 2005; and on which no cracking is found: Accomplishment of the actions specified in paragraph (h)(1) of this AD extends the threshold for the initiation of the repetitive inspections required by paragraph (g)(2) of this AD.

(1) Do the applicable repair per Part 3 of the Work Instructions of the service bulletin. At the applicable time specified in Table 1 of Part 3 of the Work Instructions of the service bulletin, do the applicable inspection of the repaired area per Part 1 of the Work Instructions of the service bulletin. Repeat the inspection thereafter within the applicable interval per Figure 1 of the service bulletin. As of the effective date of this AD, the actions must be done per Parts 1, 3, and 6 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 1, dated March 10, 2005, as applicable, and repeat the applicable inspection thereafter at intervals not to exceed 3,000 flight cycles.

(2) Do the modification of the attachment hole of the floor panel per Figure 5 of the service bulletin. Within 10,000 flight cycles after accomplishment of the modification, do the inspection of the modified area per Part 1 of the Work Instructions of the service bulletin. Repeat the inspection thereafter within the applicable interval per Figure 1 of the service bulletin. As of the effective date of this AD, the actions must be done per Figure 5 and Part 1 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 1, dated March 10, 2005, and repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles.

Determining the Number of Flight Cycles for Compliance Time

(i) For the purposes of calculating the compliance threshold and repetitive intervals for actions required by paragraphs (f), (g), or (h) of this AD: As of the effective date of this AD, all flight cycles, including the number of flight cycles in which cabin differential pressure is at 2.0 pounds per square inch (psi) or less, must be counted when determining the number of flight cycles that have occurred on the airplane.

No Reporting Requirement

(j) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle Aircraft Certification Office (SACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(3) AMOCs approved previously according to AD 2004–03–11 are approved as AMOCs for the corresponding provisions of paragraphs (f) and (g) of this AD.

Issued in Renton, Washington, on September 7, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18403 Filed 9–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22427; Directorate Identifier 2004–NM–263–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAC 1–11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all British Aerospace Model BAC 1–11 200 and 400 series airplanes. This proposed AD would require revising the airplane flight manual (AFM) to contain applicable AFM amendments, which advise the flightcrew of information pertaining to safely operating the fuel system. The proposed AD would also require revising the FAA-approved maintenance program to include certain repetitive maintenance tasks intended to improve the safety of the fuel system. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent potential ignition sources inside the fuel system, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by October 17, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact British Aerospace, Service Support, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Include the docket number ''Docket No. FAA–2005–22427; Directorate Identifier 2004–NM–263–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may

review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The FAA has examined the underlying safety issues involved in recent fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (67 FR 23085, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified us that an unsafe condition may exist on all British Aerospace Model BAC 1–11 200 and 400 series airplanes. The CAA advises that specific changes to operating procedures are necessary to ensure that the flightcrew is aware of appropriate procedures for addressing tripped circuit breakers or dry fuel tanks. Failure to follow appropriate procedures could introduce a possible ignition source into the fuel system. The CAA also advises that changes to the maintenance program are needed to prevent the possibility of ignition sources inside the fuel system. An ignition source inside the fuel system, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Relevant Service Information

The manufacturer has issued Airbus UK BAC One-Eleven Alert Service Bulletin 28–A–PM6057, Issue 1, dated May 10, 2004. The service bulletin describes procedures for revising the airplane flight manual (AFM) to contain applicable AFM amendments, which advise the flightcrew of information pertaining to the safety of the fuel system. Among other items, the AFM amendments advise the flightcrew of the following:

- Normal procedures for checking the proper operation of fuel system elements.
- Limitations on resetting tripped circuit breakers for electrical circuits for the fuel system, or restarting a fuel boost pump or transfer pump after a failure indication.
- Procedures for removing power from affected components in the event of an indication of an electrical fault in the fuel system.
- Procedures for operating the fuel pumps in a low-fuel or dry condition.

The service bulletin also contains procedures for revising the FAA-approved maintenance program to include certain maintenance tasks intended to improve the safety of the fuel system. Among other items, the maintenance tasks include:

- Visually inspecting the outlets of the fuel drain system for fuel leakage, and locating and correcting any leak.
- Performing a functional test of the temperature indicating system of the cold air unit, or performing an integrity test of the ducting of the air conditioning bay.
- Inspecting the drain pipes, drip trays, drip shields, and connectors of the fuel drain system for damage or corrosion, and for minimum clearance between drain pipes and adjacent structure.
- Inspecting the fuel system drains for correct positioning and freedom from obstruction.
- Pressure testing the wiring conduits for the booster pump in the wing tanks and for the transfer pump in the center tank.
- Inspecting the cables, components, and ducting of the wing leading edge for secure mounting and connection, and for discrepancies including chafing, damage, corrosion, evidence of leakage, and obstruction, as applicable.
- For certain airplanes, inspecting the anti-ice ducts of the wing leading edge for damage between ribs 4 and 5.
- Inspecting the ducting in the air conditioning bay for secure duct connections.

Table 1 of the service bulletin refers to specific chapters of the airplane maintenance manual (AMM) for applicable procedures for performing most of these inspections and tests. However, the service bulletin refers to British Aerospace Alert Service Bulletin 30–A–PM5149, dated May 30, 1973; as the applicable source of service information for inspecting the anti-ice ducts of the wing leading edge for damage between ribs 4 and 5. British Aerospace Alert Service Bulletin 30–A–

PM5149 describes a visual or radiographic inspection for damage of the anti-ice ducts, and corrective actions, consisting of repairing or replacing the duct, if necessary.

Table 1 specifies normal repetitive intervals ranging from 100 hours to 4800 hours, depending on the task. For airplanes subject to a ''corporate schedule,'' Table 1 specifies repetitive intervals ranging from every month to every 4 years, depending on the task.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA mandated the service information and issued British airworthiness directive G–2004–0012, dated June 21, 2004, to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. We have examined the CAA's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Clarification of Proposed AD and Maintenance Manual Temporary Revisions.''

Differences Between the Proposed AD and British Airworthiness Directive

British airworthiness directive G–2004–0012 mandates changes to the master minimum equipment list (MMEL). This (FAA) AD will not mandate those MMEL changes because the limits imposed by the FAA-approved MMEL meet or exceed those mandated by the British airworthiness directive. We have coordinated this issue with the CAA.

Clarification of Proposed AD and Maintenance Manual Temporary Revisions (TRs)

In addition to the AFM amendments described previously, Table 2 of British Aerospace Alert Service Bulletin 28–A–PM6057 also lists numerous TRs to the airplane maintenance manual. We have determined that these TRs were included in the service bulletin to provide operators with a summary of all measures taken to address current practices for fuel system safety. These TRs were not intended to address any identified unsafe condition. Therefore, this proposed AD would not require any action relative to these TRs. We have coordinated this issue with the CAA and our decision not to mandate the TRs to the maintenance manual is consistent with the CAA's action in British airworthiness directive G–2004–0012.

Clarification of Terminology

Where Table 1 of British Aerospace Alert Service Bulletin 28–A–PM6057 specifies a repetitive interval in ''hours,'' for the purposes of this AD, this means ''flight hours.''

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
AFM Revision	1	$65	$65	11	$715
Maintenance Program Revision	1	65	65	11	715

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13

by adding the following new airworthiness directive (AD):

British Aerospace Airbus Limited: Docket No. FAA–2005–22427; Directorate Identifier 2004–NM–263–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 17, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all British Aerospace Model BAC 1–11 200 and 400 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to ensure that the flightcrew and maintenance personnel are advised of procedures pertaining to the safety of the fuel system. These procedures are needed to prevent potential ignition sources inside the fuel system, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Airplane Flight Manual and Maintenance Program Revisions

(f) Within 3 months after the effective date of this AD, do the actions specified in paragraphs (f)(1) and (f)(2) of this AD to improve the safety of the fuel system, in accordance with the Accomplishment Instructions of Airbus UK BAC One-Eleven Alert Service Bulletin 28–A–PM6057, Issue 1, dated May 10, 2004.

(1) Revise the airplane flight manual to include the applicable amendments advising the flightcrew of appropriate procedures to check for proper operation of the fuel system, and to address tripped circuit breakers, failure of a fuel pump in flight, and operations in a low-fuel situation, as specified in Table 2 (under Section 4.11) of the service bulletin.

Note 1: The actions required by paragraph (f)(1) of this AD may be done by inserting a copy of the applicable advance amendment bulletins (AABs) specified in Table 2 of Airbus UK BAC One-Eleven Alert Service Bulletin 28–A–PM6057, Issue 1, dated May 10, 2004, into the AFM. When information identical to that in the applicable AABs has been included in the general revisions of the AFM, the AABs no longer need to be inserted into the AFM.

(2) Revise the FAA-approved maintenance program to include all repetitive maintenance tasks specified in Table 1 (under Section 4.10.2.) of the service bulletin. Then, thereafter, comply with the requirements of these maintenance tasks at the interval specified in Table 1 of the service bulletin; except for airplanes that operate fewer than a total of 1,250 flight hours per year, accomplish the requirements of these maintenance tasks at the earlier of the times specified in columns 2 and 3 of Table 1 of the service bulletin. Where Table 1 of the service bulletin specifies a repetitive interval in ''hours,'' for the purposes of this AD, this means ''flight hours.'' Any applicable corrective actions must be done before further flight.

Note 2: After revising the maintenance program to include the required periodic maintenance tasks according to paragraph (f)(2) of this AD, operators do not need to make a maintenance log entry to show compliance with this AD every time those maintenance tasks are accomplished thereafter.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(h) British airworthiness directive G–2004–0012, dated June 21, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on September 7, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18402 Filed 9–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22425; Directorate Identifier 2005–NM–066–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8–33, DC–8–51, DC–8–53, DC–8–55, DC–8F–54, DC–8F–55, DC–8–63, DC–8–62F, DC–8–63F, DC–8–71, DC–8–73, DC–8–71F, DC–8–72F, and DC–8–73F Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain transport category airplanes, identified above. This proposed AD would require repetitive inspections for cracks of the doorjamb corners of the main cargo door, and repair if necessary. This proposed AD also provides an optional preventive modification that extends certain repetitive intervals. This proposed AD results from reports of cracks in the fuselage skin at the corners of the doorjamb for the main cabin cargo door. We are proposing this AD to detect and correct fatigue cracks in the fuselage skin, which could result in rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by October 31, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-Wide Rulemaking Web Site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Jon Mowery, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5322; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2005–22425; Directorate Identifier 2005–NM–066–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA

personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We have received reports of cracks in the fuselage skin at the corners of the doorjamb for the main cabin cargo door on McDonnell Douglas Model DC–8–71F airplanes. Cracks were found on airplanes that had accumulated 14,600 landings. The manufacturer's investigation showed that the cracks resulted from fatigue stress. Fatigue cracks, if not corrected, could progress and result in rapid decompression of the airplane.

Other Relevant Rulemaking

On January 11, 1993, we issued AD 93–01–15, amendment 39–8469 (58 FR 5576, January 22, 1993). We issued that AD to ensure the continuing structural integrity of McDonnell Douglas Model DC–8 airplanes. That AD requires revising the FAA-approved maintenance inspection program, which provides for inspection of the Principal Structural Elements (PSEs) identified in McDonnell Douglas Report No. L26–011, ''DC–8 Supplemental Inspection Document (SID).'' That AD also requires reporting results of inspections to McDonnell Douglas, and repairing any cracked structure detected during the inspections.

Relevant Service Information

We have reviewed Boeing Service Bulletin DC8–53–079, Revision 01, dated June 26, 2002. The service bulletin describes procedures for repetitive inspections for cracks of the doorjamb corners of the main cargo door. The inspections include radiographic, high frequency eddy current (HFEC), and visual (optically aided) inspections. Each inspection type is repeated in combination (*e.g.*, radiographic and HFEC together) at varying intervals that range from 4,937 landings to 11,325 landings depending on the type of inspection. These intervals are described in Table 1 of paragraph 1.E. ''Compliance'' of the service bulletin.

If any crack is found that is 2.50 inches in length or less, the service bulletin describes procedures for repairing the fuselage skin and installing an external doubler. If any crack is found that is greater than 2.50 inches in length, the service bulletin specifies contacting the manufacturer for repair instructions and for reporting certain information. The service bulletin also gives procedures for a preventive modification of installing an external doubler at the corner of the main cabin cargo doorjamb.

After any modification or repair, the service bulletin specifies that operators should inspect again for cracks of the modified or repaired doorjamb corner within 17,000 landings after doing the modification or repair, and then repeat the inspection at intervals not to exceed 4,400 landings.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

The inspection program in Revision 01 of the service bulletin is an alternative method of compliance (AMOC) for the requirements of paragraphs (a) and (b) of AD 93–01–15 for the specified areas of PSE 53.08.044.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Bulletin.''

Differences Between the Proposed AD and the Service Bulletin

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization (DOA) Organization whom we have authorized to make those findings.

Operators should note that, although the Accomplishment Instructions of the service bulletin describe procedures for submitting certain information to the manufacturer, this AD would not require that action.

Clarification of Inspection Language

In this proposed AD, the ''visual (optically aided)'' inspection specified in the Boeing service bulletin is referred to as a ''detailed inspection.'' We have included the definition for a detailed inspection in a note in the proposed AD.

Costs of Compliance

There are about 225 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection, per inspection cycle.	20	$65	None	$1,300, per inspection cycle.	166	$215,800, per inspection cycle.
Optional preventive modification (per corner).	80	65	$26,881 to $30,913 (per corner, depending on airplane configuration).	$32,081 to $36,113	Up to 166	Up to between $5,325,446 and $5,994,758 (for one corner).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA–2005–22425; Directorate Identifier 2005–NM–066–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 31, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model DC–8–33, DC–8–51, DC–8–53, DC–8–55, DC–8F–54, DC–8F–55, DC–8–63, DC–8–62F, DC–8–63F, DC–8–71, DC–8–73, DC–8–71F, DC–8–72F, and DC–8–73F airplanes, certificated in any category; as identified in Boeing Service Bulletin DC8–53–079, Revision 01, dated June 26, 2002.

Unsafe Condition

(d) This AD results from reports of cracks in the fuselage skin at the corners of the doorjamb for the main cabin cargo door. We are issuing this AD to detect and correct fatigue cracks in the fuselage skin, which could result in rapid decompression of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspections

(f) At the applicable time in paragraph (f)(1) or (f)(2) of this AD: Do detailed, high frequency eddy current, and radiographic inspections, as applicable, for cracks of the doorjamb corners of the main cargo door in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC8–53–079, Revision 01, dated June 26, 2002. Except as provided by paragraph (g) and (h) of this AD, repeat the inspections thereafter at intervals not to exceed the applicable intervals specified in Table 1 of Paragraph 1.E. ''Compliance'' of the service bulletin.

(1) For airplanes that have been converted from passenger to cargo under Amended Type Certificate Data Sheet 4A25, Notes 25 and 26, and McDonnell Douglas Supplemental Type Certificates SA3749WE and SA3403WE: Within 15,000 flight cycles after the conversion; or within 12 months after the effective date of this AD; whichever occurs later.

(2) For airplanes that have not been converted from passenger to cargo: Before the accumulation of 15,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Corrective Actions and New Repetitive Intervals

(g) If any crack is found during any inspection required by this AD, before further flight: Do the applicable action in paragraph (g)(1) or (g)(2) of this AD in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC8–53–079, Revision 01, dated June 26, 2002.

(1) For any corner where all cracks are 2.50 inches or less in length, install an external doubler in accordance with the service bulletin: Before the accumulation of 17,000 flight cycles after the installation, do the next inspection of that corner as specified in paragraph (f) of this AD. Repeat the inspections in paragraph (f) of this AD for that corner thereafter at intervals not to exceed 4,400 flight cycles.

(2) For any corner where any crack is greater than 2.50 inches in length, repair the crack using a method approved in accordance with paragraph (k) of this AD.

Optional Preventive Modification

(h) Installing an external doubler on a corner in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC8–53–079, Revision 01, dated June 26, 2002, terminates the repetitive inspection intervals of paragraph (f) of this AD for that corner. Before the accumulation of 17,000 flight cycles after the installation: Do the next inspection of that corner, as specified in paragraph (f) of this AD. Repeat the inspections in paragraph (f) of this AD for that corner thereafter at intervals not to exceed 4,400 flight cycles.

No Reporting Required

(i) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Actions Accomplished in Accordance With Previous Issue of Service Bulletin

(j) Actions accomplished before the effective date of this AD in accordance with Boeing Service Bulletin DC8–53–079, dated January 31, 2001, are acceptable for compliance with the corresponding action in this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet

the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(3) Inspections required by this AD of specified areas of Principal Structural Element (PSE) 53.08.044 are acceptable for compliance with the applicable requirements of paragraphs (a) and (b) of AD 93–01–15, amendment 39–8469 (58 FR 5576, January 22, 1993). The remaining areas of the affected PSEs must be inspected and repaired as applicable, in accordance with AD 93–01–15.

Issued in Renton, Washington, on September 7, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18401 Filed 9–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22426; Directorate Identifier 2005–NM–105–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–300, 747–400, 747–400D, and 747SR Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–300, 747–400, 747–400D, and 747SR series airplanes. This proposed AD would require a one-time inspection to determine whether any steel doubler (small or large) is installed at the lower forward and upper aft corners of the fuselage cutout at main entry doors (MEDs) number 3. Depending on the results of this inspection, this proposed AD also would require repetitive inspections for cracks of the skin, bearstrap, and small steel doubler (if installed) at the applicable corner or corners of the fuselage cutouts, and related investigative/corrective actions if necessary. This proposed AD also would provide the optional terminating action for the repetitive inspections of installing a large steel doubler at the affected corners. This proposed AD is prompted by reports of cracks in the skin and bearstrap at the upper aft corner and at the lower forward corner of the fuselage cutout at MEDs number 3. We are proposing this AD to detect and correct cracks in the skin, bearstrap, and small steel doubler (if installed), which could propagate and result in rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by October 31, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web Site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-Wide Rulemaking Web Site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–22426; the directorate identifier for this docket is 2005–NM–105–AD.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–22426; Directorate Identifier 2005–NM–105–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System (DMS) receives them.

Discussion

We have received a report indicating that seven operators of the affected airplanes have found cracks in the skin and bearstrap at the upper aft corner of the fuselage cutout at main entry doors (MEDs) number 3. These cracks, which were between 0.6 inch and 2.5 inches in length, were found on airplanes that had accumulated between 12,140 and 23,927 flight cycles. We have received other reports indicating that some operators also found cracks in the skin and bearstrap at the lower forward corner of the fuselage cutout at MEDs number 3. These cracks were between 0.5 inch and 4.0 inches in length, and were found on airplanes that had accumulated between 11,986 and 23,083 flight cycles. Cracks in the skin, bearstrap, and small steel doubler, if not detected and corrected, could propagate and result in rapid decompression of the airplane.

Other Relevant Rulemaking

On December 8, 1992, we issued AD 92–27–04, amendment 39–8437 (57 FR 59801, December 16, 1992) for certain Boeing Model 747 series airplanes. [A correction of that AD was published in the **Federal Register** on February 17, 1993 (58 FR 8693)]. We issued that AD to prevent the structural degradation of

the airplane by requiring various repetitive inspections of the airplane structure for cracks, and repair if any crack is found. AD 92–27–04 refers to Section 4 of Boeing Document No. D6–35999, Revision C, dated January 21, 1992, as the appropriate source of service information for doing the various inspections and repairs. Boeing Document No. D6–35999 in turn refers to Boeing Service Bulletin 747–53–2218, Revision 4, dated November 9, 1989, as the appropriate source of service information for doing the specific inspections of the lower forward corner of the fuselage cutout at MEDs number 3, and doing any necessary repairs. Installing a small or large steel doubler at the lower forward corner of the cutout in accordance with Boeing Service Bulletin 747–53–2218 terminates the repetitive inspection requirements of AD 92–27–04 for that area.

On April 22, 1993, we issued AD 93–08–12, amendment 39–8559, (58 FR 27927, May 12, 1993), for certain Boeing Model 747 series airplanes. That AD requires repetitive detailed visual internal inspections to detect cracks in various areas of the fuselage internal structure, and repair if necessary. Among other areas of the fuselage, AD 93–08–12 requires inspection of the upper aft and lower forward corners of the fuselage cutout at MEDs number 3, with and without steel doublers installed at those corners. Boeing Service Bulletin 747–53A2512, Revision 1, dated August 11, 2005, which is described below and cited as the appropriate source of service information for this new proposed AD, refers to AD 93–08–12. However, on May 14, 2002, we issued AD 2002–10–10, amendment 39–12756, (67 FR 36081, May 23, 2002) to supersede AD 93–08–12. AD 2002–10–10 retains the requirements of AD 93–08–12 for the area affected by this new proposed AD, but adds new repetitive inspections for cracking in certain areas of the upper chord of the upper deck floor beams, and repair if necessary. AD 93–08–12 and AD 2002–10–10 refer to Boeing Service Bulletin 747–53–2349, dated June 27, 1991, as the appropriate source of service information for doing the inspections and repair if necessary. In addition, on April 1, 2005, we issued a proposed AD that would supersede AD 2002–10–10. That proposed AD (Docket No. FAA–2005–20880, Directorate Identifier 2003-NM–229-AD, 70 FR 18332, April 11, 2005) would retain certain requirements of AD 2002–10–10 but add repetitive inspections for cracking of additional areas of the fuselage internal structure and related investigative/corrective actions.

Relevant Service Information

We have reviewed Boeing Service Bulletin 747–53A2512, including 747–53A2512, Revision 1, dated August 11, 2005. The service bulletin describes procedures for repetitive inspections to determine the size and presence of any steel doubler installed at the lower forward and/or upper aft corners of the fuselage cutout at MEDs number 3. If a large steel doubler was previously installed in accordance with Boeing Service Bulletin 747–53–2218 (described below), or the Boeing 747–100/200/300 Structural Repair Manual (SRM), Service Bulletin 747–53A2512 states that no further action is required for that corner. For lower forward corners that have no steel doubler installed, the service bulletin states that inspections and any applicable repairs are done in accordance with Boeing Service Bulletin 747–53–2218 (AD 92–27–04).

For all other corners and doubler configurations, the service bulletin gives various intervals for initial and repetitive inspections for cracks of the skin, bearstrap, and small steel doubler (if installed) at the lower forward and upper aft corners of the fuselage cutout at MEDs number 3. There are two options given in Boeing Service Bulletin 747–53A2512 for doing the initial and repetitive inspections. The first option is to do a detailed inspection. The second option is to do a high-frequency eddy current (HFEC) inspection. The service bulletin specifies that operators should also do a general visual inspection to detect cracks in the small steel doubler (if installed) and any previous repair trimouts in the bearstrap and skin at the same time as the initial detailed or HFEC inspection. The inspection thresholds and repetitive intervals specified in the service bulletin are described in the table below.

INSPECTION THRESHOLDS AND REPETITIVE INTERVALS

For airplanes that have—	Do the first inspection of that corner—	Repeat the detailed or HFEC inspection thereafter at intervals not to exceed—
A small steel doubler installed at the upper aft corner in production or in accordance with Boeing service bulletin 747–53–2025 (described below).	At the later of 10,000 total flight cycles or within 1,000 flight cycles after the original issue date of Boeing Service Bulletin 747–53A2512.	3,000 flight cycles.
A small steel doubler installed at the lower forward corner in production or in accordance with Boeing service bulletin 747–53–2218 (described below).	At the later of 10,000 total flight cycles or within 1,000 flight cycles after the original issue date of Boeing Service Bulletin 747–53A2512.	6,000 flight cycles.
No steel doubler (large or small) installed at the upper aft corner.	At the later of 10,000 total flight cycles or within 1,000 flight cycles after the original issue date of Boeing Service Bulletin 747–53A2512.	1,000 flight cycles.

If the general visual inspection shows evidence of previous repair trimouts in the skin and/or bearstrap, the service bulletin gives procedures for doing a related investigative action. This related investigative action is doing an X-ray or detailed inspection for cracks at the repair trimouts. If no crack is found during the X-ray or detailed inspection, the service bulletin states that operators should repeat the applicable detailed or HFEC inspection at the applicable interval in the table above.

If any crack is found during any detailed, HFEC, or X-ray inspection, the service bulletin specifies that operators should do another related investigative action before further flight. This related investigative action is a dye penetrant or HFEC inspection to measure the crack length in order to determine the procedures for corrective action. After the crack length is determined, the service bulletin then specifies that operators should do the applicable corrective action before further flight. If all cracks are inside certain zones specified in the service bulletin, the corrective action is repairing the area by trimming out or stop-drilling the crack,

and installing a large steel doubler at the applicable cutout corner. Installing a large steel doubler terminates the repetitive inspections for that corner. If any crack is outside certain zones specified in the service bulletin, the corrective action is asking Boeing for repair data so that the repair can be accomplished before further flight. The service bulletin also states that crack findings should be reported to Boeing.

Accomplishing the actions specified in the service information described above is intended to adequately address the unsafe condition.

Boeing Alert Service Bulletin 747–53A2512 refers to Boeing Service Bulletin 747–53–2218, Revision 4, dated November 9, 1989, as an additional source of service information for inspecting airplanes that do not have a steel doubler (large or small) installed at the lower forward corner of the fuselage cutout at MEDs number 3. AD 92–27–04 refers to Section 4 of Boeing Document No. D6–35999, Revision C, dated January 21, 1992 as the appropriate source of service information for doing the various inspections and repairs. Boeing Document No. D6–35999 in turn refers to Boeing Service Bulletin 747–53–2218, Revision 4, dated November 9, 1989, as the appropriate source of service information for doing the specific inspections of the lower forward corner of the fuselage cutout at MEDs number 3, and doing any necessary repairs.

Boeing has also issued Boeing Service Bulletin 53–2025, Revision 2, dated March 22, 1974. This service bulletin describes procedures for reinforcing the cutout at MEDs number 3.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and Boeing Service Bulletin 747–53A2512.''

Although installing a small steel doubler at the lower forward corner of the cutout at MED number 3 terminates the repetitive inspection requirements of AD 92–27–04 for that area, inspections of that area would again be required by this proposed AD. Installing a large steel doubler in that area in accordance with this proposed AD or in accordance with Boeing Service Bulletin 747–53–2218 would terminate the repetitive inspection requirements of both AD 92–27–04 and this proposed AD for that area. Although AD 92–27–04 allows installation of a small steel doubler, this proposed AD would not allow that action after the effective date of the proposed AD.

Differences Between the Proposed AD and Boeing Service Bulletin 747–53A2512

Boeing Service Bulletin 747–53A2512 specifies compliance times relative to the date of issuance of the service bulletin; however, this proposed AD would require compliance before the specified compliance time after the effective date of this AD.

Boeing Service Bulletin 747–53A2512 specifies that you may contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require you to repair those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

Although the Accomplishment Instructions of Boeing Service Bulletin 747–53A2512 describe procedures for reporting crack findings to Boeing, this proposed AD would not require those actions. We do not need this information from operators.

These differences have been coordinated with Boeing.

Clarification of Inspection Language

Boeing Service Bulletin 747–53A2512 refers to a ''visual check of the MED number 3 cutout to determine if a small, large, or no steel doubler is installed.'' We have determined that the procedures in the service bulletin should be described as a ''general visual inspection.'' The service bulletin includes a definition of this inspection.

Costs of Compliance

There are about 710 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
One-time general visual inspection.	1	$65	None	$65	170	$11,050

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2005–22426; Directorate Identifier 2005–NM–105–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by October 31, 2005.

Affected ADs

(b) Installing a large steel doubler at the lower forward corner of the fuselage cutout at main entry doors (MEDs) number 3 in accordance with AD 92–27–04, amendment 39–8437, terminates the inspection requirements of this AD for that area only.

Applicability

(c) This AD applies to all Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–300, 747–400, 747–400D, and 747SR series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of cracks in the skin and bearstrap at the upper aft corner and at the lower forward corner of the fuselage cutout at MEDs number 3. We are issuing this AD to detect and correct cracks in the skin, bearstrap, and small steel doubler (if installed), which could propagate and result in rapid decompression of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2512, Revision 1, dated August 11, 2005.

Inspection for Steel Doublers

(g) Prior to the accumulation of 10,000 total flight cycles or within 1,000 flight cycles after the effective date of this AD, whichever occurs later: Do a general visual inspection of the lower forward and upper aft corners of the fuselage cutout at MEDs number 3 to determine whether a small, a large, or no steel doubler is installed, and do the applicable action in paragraphs (g)(1) or (g)(2) of this AD. Do all actions in accordance with the service bulletin.

(1) If a large steel doubler is installed, or if no steel doubler is installed at the lower forward cutout, no further action is required by this AD for that cutout corner, except the requirements of paragraph (m) of this AD continue to apply.

Note 1: Boeing Alert Service Bulletin 747–53A2512 refers to Boeing Service Bulletin 747–53–2218, Revision 4, dated November 9, 1989, as an additional source of service information for inspecting airplanes that are determined by the inspection required by paragraph (g) of this AD to have no steel doubler (large or small) installed at the lower forward corner of the fuselage cutout at MEDs number 3.

(2) For all doubler configurations except those specified in paragraph (g)(1) of this AD, do the actions in paragraph (h) of this AD at the applicable time in that paragraph.

Inspections for Cracks, and Related Investigative and Corrective Actions

(h) For the doubler configurations specified in paragraph (g)(2) of this AD (except as required by paragraph (i) of this AD), at the times specified in paragraph 1.E. ''Compliance'' of the service bulletin: Do the applicable inspections for cracks in the skin and bearstrap at the upper aft corner and at the lower forward corner of the fuselage cutout at MEDs number 3, and do any related investigative actions and corrective actions before further flight by doing all the actions in accordance with the service bulletin. Repeat the inspections thereafter at the intervals specified in paragraph 1.E, ''Compliance'' of the service bulletin. Where the service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, do the repair using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

(i) Where the service bulletin specifies compliance times relative to the date of issuance of the service bulletin, this AD requires compliance relative to the effective date of this AD.

Terminating Action

(j) Installing a large steel doubler in accordance with the service bulletin terminates the repetitive inspection requirements of this AD for the corner of the fuselage cutout at MEDs number 3 at which the large steel doubler is installed.

No Reporting Required

(k) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that a requirement.

Actions Done in Accordance With Original Issue of Service Bulletin

(l) Actions done before the effective date of this AD in accordance with Boeing Service Bulletin 747–53A2512, dated May 5, 2005, are acceptable for compliance with the requirements with the corresponding actions of this AD.

Parts Installation

(m) After the effective date of this AD, no person may install on any airplane a small steel doubler at the lower forward corner of the fuselage cutout at MEDs number 3, as described in Appendix A of the service bulletin.

Note 2: Although AD 92–27–04, amendment 39–8437, has a terminating action of installing a small steel doubler in accordance with Boeing Service Bulletin 747–53–2218, Revision 4, dated November 9, 1989, that action is not allowed after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on September 7, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18400 Filed 9–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG–104143–05]

RIN 1545–BE32

Application of the Federal Insurance Contributions Act to Payments Made for Certain Services; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document corrects a notice of proposed rulemaking (REG-104143–05) that was published in the **Federal Register** on Friday, August 26, 2005 (70 FR 50228). The document contains regulations relating to payments made for service not in the course of the employer's trade or business, for domestic service in a private home of the employer, for agricultural labor, and for service performed as a home worker within the meaning of section 3121(d)(3)(C) of the Internal Revenue Code.

FOR FURTHER INFORMATION CONTACT: Paul Carlino, (202) 622–0047 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–104143–05) that is the subject of this correction is under section 3121(d)(3)(C) of the Internal Revenue Code.

Need for Correction

As published, REG–104143–05 contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–104143–05), that was the subject of FR Doc. #05–16944, is corrected as follows:

§ 31.3121(a)–2 [Corrected]

On page 50231, column 2, § 31.3121(a)–2, paragraph (d)(2), third line from the bottom of the paragraph, the language ''paragraph (d)(2), see § 31.3102–1 in'' is corrected to read ''paragraph (d)(2), see § 31.3121(a)–2 in''.

Cynthia Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 05–18468 Filed 9–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–150088–02]

RIN 1545–BB96

Miscellaneous Changes to Collection Due Process Procedures Relating to Notice and Opportunity for Hearing Upon Filing of Notice of Federal Tax Lien

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the regulations relating to a taxpayer's right to a hearing under section 6320 of the Internal Revenue Code of 1986 after the filing of a notice of Federal tax lien (NFTL). The proposed regulations make certain clarifying changes in the way collection due process (CDP) hearings are held and specify the period during which a taxpayer may request an equivalent hearing. The proposed regulations affect taxpayers against whose property or rights to property the Internal Revenue Service (IRS) files a NFTL on or after January 19, 1999. This document also contains a notice of public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by December 15, 2005. Outlines of topics to be discussed at the public hearing scheduled for 10 a.m. on January 19, 2006 must be received by December 29, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–150088–02), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–150088–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (indicate IRS and REG–150088–02). The public hearing will be held in the IRS Auditorium, Internal Revenue Building (7th Floor), 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, call Laurence K. Williams, 202–622–3600 (not a toll-free number); concerning submissions and/or to be placed on the building access list to attend the hearing, call Robin Jones, 202–622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to the provision of notice under section 6320 of the Internal Revenue Code to taxpayers of a right to a CDP hearing (CDP Notice) after the IRS files a NFTL. Final regulations (TD 8979) were published on January 18, 2002 in the **Federal Register** (67 FR 2558). The final regulations implemented certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105–206, 112 Stat. 685)(RRA 1998), including the addition of section 6320 to the Internal Revenue Code. The final regulations affected taxpayers against whose property or rights to property the IRS files a NFTL.

Section 3401 of RRA 1998 also added section 6330 to the Internal Revenue Code. That statute provides for notice to taxpayers of a right to a hearing before or, in limited cases, after levy. A number of the provisions in section 6330 concerning the conduct and judicial review of a CDP hearing are incorporated by reference in section 6320. On January 18, 2002, final regulations (TD 8980) under section 6330 were published in the **Federal Register** (67 FR 2549) along with the final regulations under section 6320.

Explanation of Provisions

A taxpayer is entitled to one CDP hearing with respect to the tax and tax period covered by a CDP Notice concerning a levy or a CDP Notice concerning the filing of a NFTL. The IRS Office of Appeals (Appeals) has conducted over 92,000 CDP hearings and more than 30,000 equivalent hearings since sections 6320 and 6330 became effective for collection actions initiated on and after January 19, 1999.

In general, the experience of the past six years with CDP hearings has demonstrated that there is a need for changes to allow Appeals to effectively and fairly handle the cases of taxpayers who raise issues of substance. Appeals has instituted many improvements in its processing of CDP cases and has conducted extensive training in an effort to provide careful, but timely, review of CDP cases, which currently are filed at a rate of approximately 2,450 per month. The proposed regulations, if adopted as final regulations, will

increase efficiency without compromising the quality and fairness of review.

In many CDP cases, significant time is spent merely identifying the issues. Although the Form 12153 used to request a CDP hearing requires a taxpayer to state a reason or reasons for disagreeing with the NFTL filing, many taxpayers either do not supply that information, or raise new issues during the CDP hearing process not identified on the hearing request. Delays result while taxpayers provide new supporting documentation and Appeals personnel reconsider prior conclusions in light of the new information. Cases of other taxpayers pending in Appeals are delayed because other work must be constantly rescheduled.

Cases are also delayed when taxpayers propose collection alternatives for which they are not eligible. The IRS does not consider offers in compromise or installment agreements from taxpayers who have failed to file required returns as of the date the offer or the proposed installment agreement is submitted. See Publication 594, ''What You Should Know about the IRS Collection Process (Rev. 2–2004).'' Similarly, the IRS will not consider an offer in compromise from an in-business taxpayer unless the taxpayer has timely filed all returns and timely made all Federal tax deposits for two consecutive quarters. See Form 656, ''Offer in Compromise (Rev. 7–2004).'' The resources of Appeals are ineffectively utilized arranging and conducting face-to-face conferences requested by non-compliant taxpayers whose only complaint is the rejection of an offer to compromise or installment agreement for which they are not eligible.

Frivolous cases also cause unnecessary delays. During fiscal year 2004, 5.4 percent of the 32,226 CDP and equivalent-hearing cases Appeals handled involved taxpayers who were non-filers or raised only frivolous issues. Cases raising frivolous issues, in particular, consume a disproportionately large amount of time, because Appeals personnel must often read lengthy, frivolous submissions in search of any substantive issue buried within. Delays also result when taxpayers use face-to-face conferences as a venue for frivolous oration and harassment of Appeals personnel.

The proposed regulations attempt to address these and other problems that have become apparent during the first six years of CDP practice. The proposed changes are aimed at creating a more focused procedure that will allow Appeals to continue to provide careful review of NFTL filings as the volume of cases increases.

A taxpayer must request a CDP hearing in writing. The current regulations require that a request for a CDP hearing include the taxpayer's name, address, and daytime telephone number, and that the request be dated and signed by either the taxpayer or the taxpayer's authorized representative. Section 301.6320–1(c)(2), Q&A–C1. A Form 12153, ''Request for a Collection Due Process Hearing,'' is included with the CDP Notice sent to the taxpayer pursuant to section 6320. The Form 12153 requests (1) The taxpayer's name, address, daytime telephone number, and taxpayer identification number (SSN or EIN), (2) the type of tax involved, (3) the tax period at issue, (4) a statement that the taxpayer requests a hearing with Appeals concerning the filing of the NFTL, and (5) the reason or reasons why the taxpayer disagrees with the NFTL filing. Although taxpayers are encouraged to use a Form 12153 in requesting a CDP hearing, the current regulations do not require the use of Form 12153.

Section 301.6320–1(c)(2), A–C1, of the proposed regulations requires taxpayers to state their reasons for disagreement with the NFTL filing whether or not a Form 12153 is used to request a CDP hearing. In addition, a taxpayer who fails to sign a timely CDP hearing request because the request is made by a spouse or other unauthorized representative must affirm in writing that the request was originally submitted on the taxpayer's behalf. Failure to provide the written affirmation within a reasonable time after a request from Appeals will result in the denial of a CDP hearing for that taxpayer.

A CDP hearing is to be conducted by an Appeals officer or employee who has had no ''prior involvement'' with respect to the tax for the tax periods to be covered by the hearing, unless the taxpayer waives this requirement. Section 301.6320–1(d)(2), A–D4 of the current regulations provides that ''prior involvement'' by an Appeals officer or employee includes participation or involvement in an Appeals hearing that the taxpayer may have had with respect to the tax and tax period shown on the CDP Notice, other than a CDP hearing held under either section 6320 or section 6330. It is important that ''prior involvement'' be construed in a manner that reasonably protects against predisposition but at the same time does not disqualify too broad a range of Appeals personnel. A broad standard of ''prior involvement'' would lead to uncertain application, could result in the disqualification of an entire Appeals office, many of which have small staffs, and could make it difficult to conduct the CDP hearing. Section 301.6320–1(d)(2), A–D4 of the proposed regulations provides that prior involvement exists only when the taxpayer, the tax liability and the tax period shown on the CDP Notice also were at issue in the prior non-CDP hearing or proceeding, and the Appeals officer or employee actually participated in the prior hearing or proceeding. Examples are provided in § 301.6320–1(d)(3) of the proposed regulations. Section 301.6320–1(d)(2), A–D7, of the proposed regulations clarifies that a face-to-face conference is merely one aspect of a CDP hearing under section 6320 and is not by itself the entire CDP hearing.

A–D7 of the proposed regulations also provides that, in all cases, the Appeals officer or employee will review the taxpayer's request for a CDP hearing, the case file, other written communications from the taxpayer, and any notes of oral communications with the taxpayer or the taxpayer's representative. If no face-to-face or telephonic conference is held, review of those documents will constitute the CDP hearing for purposes of section 6320(b).

A–D7 of the proposed regulations further clarifies that when a business taxpayer is offered an opportunity for a face-to-face conference it will be held at the Appeals office closest to the taxpayer's principal place of business. The current regulations have been misinterpreted by some taxpayers as requiring the IRS to hold a face-to-face conference at the taxpayer's principal place of business. Q&A–D8 of the proposed regulations is new. It describes specific circumstances in which Appeals will not hold a face-to-face conference with the taxpayer or the taxpayer's representative because a conference will serve no useful purpose. The experience of Appeals is that although most taxpayers request face-to-face conferences, they are sometimes difficult to schedule on a date and at a time that is convenient for the taxpayer. In some of these cases, taxpayers or their representatives have used the scheduling of a face-to-face conference as a tactic to delay the IRS's collection efforts. In other cases, taxpayers have requested a face-to-face conference merely to raise frivolous arguments concerning the Federal tax system or to request collection alternatives for which they do not qualify. Q&A-D8 of the proposed regulations provides that a face-to-face conference need not be offered if the taxpayer or the taxpayer's representative raises only frivolous

arguments concerning the Federal tax system. See the IRS Internet site, *http://www.irs.gov/pub/irs-utl/friv_tax.pdf,* for examples of frivolous arguments. A face-to-face conference also will not be granted if the taxpayer proposes collection alternatives that would not be available to other taxpayers in similar circumstances. A face-to-face conference need not be granted if the taxpayer does not provide in the written request for a CDP hearing, as perfected, the required information set forth in A–C1(ii)(E) of paragraph (c)(2) of the proposed regulations.

In addition, a face-to-face conference will not be held at the location closest to the taxpayer's residence or principal place of business if all Appeals officers or employees at that location are considered to have prior involvement as provided in A–D4. In this case, the taxpayer will be offered a hearing by telephone or correspondence, or some combination thereof. The taxpayer may be able to obtain a face-to-face conference at the Appeals office closest to the taxpayer's residence or principal place of business under these circumstances if the taxpayer waives the requirement of section 6320(b)(3) concerning impartiality of the Appeals officer or employee. Appeals will offer the taxpayer a face-to-face conference at another Appeals office if in the exercise of its discretion Appeals would have offered the taxpayer a face-to-face conference at the original location.

With the foregoing exceptions, it is anticipated that a face-to-face conference will ordinarily be offered with respect to any relevant issues or collection alternatives for which the taxpayer qualifies.

Sections 301.6320–1(e)(1) and 301.6320–1(e)(3), A–E2 and A–E7 have been changed to more closely follow the language of section 6330(c)(2)(B), made applicable to section 6320 by section 6320(c). These changes are necessary because these regulations have been misinterpreted as defining the underlying tax liability that may be considered at the CDP hearing under section 6330(c)(2)(B) to be the tax liability listed on the CDP Notice. The intent of the existing regulations, which refer to tax liability on the CDP Notice, is that taxpayers may only challenge taxes or tax periods listed on the CDP Notice, not to supply a substantive definition of underlying tax liability. Section 301.6320–1(e)(3), A–E6 has been amended to clarify that taxpayers who receive CDP hearings can only qualify for collection alternatives available generally to taxpayers in similar circumstances.

The experience of the past six years has revealed that many taxpayers raise an issue with Appeals but fail to furnish any documentation or evidence with respect to the issue despite being given a reasonable period to do so. For example, a taxpayer may request an installment agreement, but when an Appeals officer or employee requests financial data necessary to determine eligibility for the installment agreement, the taxpayer may not comply with the request. Or a taxpayer may dispute liability for a tax period by claiming entitlement to deductions, but provide no substantiation for the deductions in response to requests from Appeals. Current § 301.6320–1(f)(2), A–F5 provides that a taxpayer may not seek judicial review of an issue that he has not raised during the CDP hearing. A–F5 is revised to clarify that in order to obtain judicial review, a taxpayer must not only bring the issue to the attention of Appeals but must also submit, if requested, evidence with respect to that issue. Under revised A–F5, if the taxpayer does not provide Appeals any evidence with respect to the issue after being given a reasonable opportunity to submit such evidence, then he may not ask a court to consider the issue.

There has been some confusion about what documents Appeals should retain, and what notations the Appeals officer or employee conducting the hearing should make, in order to provide a judicially reviewable administrative record. A new Q&A–F6 has been added to specify the contents of the administrative record required for court review.

The IRS receives a number of tardy requests for CDP hearings. The changes to § 301.6320–1(i)(2) explain how these requests will be treated. The proposed amendments to the regulations add a new Q&A–I1 to § 301.6320–1(i)(2) to explain that a taxpayer must request an equivalent hearing in writing. A taxpayer may obtain an equivalent hearing if the 30-day period described in section 6320(a)(3) for requesting a CDP hearing has expired. Unlike an Appeals determination in a CDP hearing, the Appeals decision in an equivalent hearing is not reviewable in court. Under new Q&A–I1, the IRS is not required to treat a late-filed CDP request as a request for an equivalent hearing. Section 301.6320–1(c)(2), A–C7 has been amended to require that the taxpayer be notified of the right to an equivalent hearing in all cases in which a tardy request for a CDP hearing is received. It is expected that the IRS will either send the taxpayer a letter or orally inform the taxpayer that the CDP hearing request is untimely and ask if the taxpayer wishes to have an equivalent hearing. If the taxpayer elects to have an equivalent hearing, the IRS will treat the CDP hearing request as a request for an equivalent hearing without requiring the taxpayer to make an additional request written request.

Current Q&A–I1 through I5 are renumbered Q&A–I2 through I6. The proposed regulations add Q&A–I7 to § 301.6320–1(i)(2) to clarify that the period during which a taxpayer may obtain an equivalent hearing is not indefinite. The equivalent hearing procedure is not provided by statute but, consistent with the legislative history of RRA 1998, was adopted in order to accommodate taxpayers who failed timely to exercise their right to a CDP hearing. The equivalent hearing was meant to occur near the time a CDP hearing held pursuant to a timely request would have occurred, because it was meant to address the same matters that would have been addressed at a CDP hearing. The procedure was not meant to provide a hearing right that could be exercised months or years after the circumstances that precipitated the filing of the NFTL have passed. A hearing before Appeals at a later time may be obtained under the Collection Appeals Program. Therefore, proposed Q&A–I7 limits to one year the period during which a taxpayer may request an equivalent hearing. The period commences the day after the end of the five business day period following the filing of the NFTL, described in section 6320(a)(2).

Because the time for requesting an equivalent hearing will be limited, the proposed regulations add new Q&A–I8, Q&A–I9, Q&A–I10 and Q&A–I11 to § 301.6320–1(i)(2) to provide the same rules governing mailing, delivery and determination of timeliness that apply to requests for CDP hearings. Unlike existing § 301.6320–1(c)(2), A–C6, new A–I10 does not identify the officials to whom to send an equivalent hearing request if the CDP Notice does not specify where to send the request. Because the identity and the address of the person to whom the request should be sent may change in the future, taxpayers will be able to obtain more current information by calling the 1–800 number listed in A–I10. Section 301.6320–1(c)(2), A–C6 also has been revised in the proposed regulations to provide that taxpayers should call the 1–800 number to obtain the address to which the CDP hearing request should be sent.

The proposed regulations are effective the date 30 days after final regulations are published in the **Federal Register** with respect to requests for CDP

hearings or eqivalent hearings made on or after the date 30 days after final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 19, 2006, at 10 a.m. in the IRS Auditorium, Internal Revenue Building (7th Floor), 1111 Constitution Avenue, NW., Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having a visitor's name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** caption.

An outline of the topics to be discussed and the time to be devoted to each topic must be submitted by any person who wishes to present oral comments at the hearing. Outlines must be received by December 29, 2005.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving requests to speak has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Laurence K. Williams, Office of Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy and Summonses Division).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6320–1 is proposed to be amended as follows:

1. Paragraph (c)(2) A–C1, Q&A–C6 and A–C7 are revised.
2. Paragraph (d)(2) A–D4 and A–D7 are revised.
3. Paragraph (d)(2) Q&A–D8 is added.
4. Paragraph (d)(3) is added.
5. Paragraph (e)(1) is revised.
6. Paragraph (e)(3) A–E2, A–E6 and A–E7 are revised.
7. Paragraph (f)(2) A–F5 is revised.
8. Paragraph (f)(2) Q&A–F6 is added.
9. Paragraph (i)(2) Q&A–I1 through Q&A–I5 are redesignated as Q&A–I2 through Q&A–I6, a new paragraph (i)(2) Q&A–I1 and new paragraphs Q&A–I7 through Q&A–I11 are added.
10. Paragraph (j) is revised.

§ 301.6320–1 Notice and opportunity for hearing upon filing of notice of Federal tax lien.

* * * * *

(c) * * *

(2) * * *

A–C1. (i) The taxpayer must make a request in writing for a CDP hearing. The request for a CDP hearing shall include the information specified in A–C1(ii) of this paragraph (c)(2). See A–D7 and A–D8 of paragraph (d)(2).

(ii) The written request for a CDP hearing must be dated and must include the following information:

(A) The taxpayer's name, address, daytime telephone number (if any), and taxpayer identification number (SSN or EIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer requests a hearing with Appeals concerning the filing of the NFTL.

(E) The reason or reasons why the taxpayer disagrees with the filing of the NFTL.

(F) The signature of the taxpayer or the taxpayer's authorized representative.

(iii) The taxpayer must perfect any timely written request for a CDP hearing that does not provide the required information set forth in A–C1(ii) of this paragraph within a reasonable period of time after a request from the IRS.

(iv) Taxpayers are encouraged to use a Form 12153, ''Request for a Collection Due Process Hearing,'' in requesting a CDP hearing so that the request can be readily identified and forwarded to Appeals. Taxpayers may obtain a copy of Form 12153 by contacting the IRS office that issued the CDP Notice, by downloading a copy from the IRS Internet site, *http://www.irs.gov/pub/irs-pdf/f12153.pdf,* or by calling, toll-free, 1–800–829–3676.

(v) The taxpayer must affirm any timely written request for a CDP hearing which is signed or alleged to have been signed on the taxpayer's behalf by the taxpayer's spouse or other unauthorized representative by filing, within a reasonable period of time after a request from the IRS, a signed, written affirmation that the request was originally submitted on the taxpayer's behalf. If the affirmation is not filed within a reasonable period of time after a request, the CDP hearing request will be denied with respect to the non-signing taxpayer.

* * * * *

Q–C6. Where must the written request for a CDP hearing be sent?

A–C6. The written request for a CDP hearing must be sent, or hand delivered (if permitted), to the IRS office and address as directed on the CDP Notice. If the address of that office does not appear on the CDP Notice, the taxpayer should obtain the address of the office to which the written request should be sent or hand delivered by calling, toll-free, 1–800–829–1040 and providing the taxpayer's identification number (SSN or TIN).

* * * * *

A–C7. If the taxpayer does not request a CDP hearing in writing within the 30-day period that commences on the day after the end of the five business day notification period, the taxpayer foregoes the right to a CDP hearing under section 6320 with respect to the unpaid tax and tax periods shown on the CDP Notice. If the request for CDP hearing is received after the 30-day period, the taxpayer will be notified of the untimely request and of the right to

an equivalent hearing. See paragraph (i) of this section.

* * * * *

(d) * * *

(2) * * *

A–D4. Prior involvement by an Appeals officer or employee includes participation or involvement in an Appeals hearing (other than a CDP hearing held under either section 6320 or section 6330) that the taxpayer may have had with respect to the tax and tax period shown on the CDP Notice. Prior involvement exists only when the taxpayer, the tax liability and the tax period at issue in the CDP hearing also were at issue in the prior non-CDP hearing or proceeding, and the Appeals officer or employee actually participated in the prior hearing or proceeding.

* * * * *

A–D7. Except as provided in A–D8 of this paragraph (d)(2), a taxpayer who presents in the CDP hearing request relevant, non-frivolous reasons for disagreement with the NFTL filing will ordinarily be offered an opportunity for a face-to-face conference at the Appeals office closest to taxpayer's residence. A business taxpayer will ordinarily be offered an opportunity for a face-to-face conference at the Appeals office closest to the taxpayer's principal place of business. If that is not satisfactory to the taxpayer, the taxpayer will be given an opportunity for a hearing by telephone or by correspondence. In all cases, the Appeals officer or employee will review the case file, which includes the taxpayer's request for a CDP hearing, any other written communications from the taxpayer or the taxpayer's authorized representative, and any notes made by Appeals officers or employees of any oral communications with the taxpayer or the taxpayer's authorized representative. If no face-to-face or telephonic conference or correspondence hearing is held, review of those documents will constitute the CDP hearing for purposes of section 6320(b).

Q–D8. In what circumstances will a face-to-face CDP conference not be granted?

A–D8. A taxpayer is not entitled to a face-to-face CDP conference at a location other than as provided in A–D7 of this paragraph (d)(2) and this A–D8. If all Appeals officers or employees at the location provided for in A–D7 of this paragraph have had prior involvement with the taxpayer as provided in A–D4 of this paragraph, the taxpayer will not be offered a face-to-face meeting at that location, unless the taxpayer elects to waive the requirement of section 6320(b)(3). The taxpayer will be offered a face-to-face conference at another Appeals office if Appeals in the exercise of its discretion would have offered the taxpayer a face-to-face conference at the location provided in A–D7. A face-to-face CDP conference concerning a taxpayer's underlying liability will not be granted if the request for a hearing or other taxpayer communication indicates that the taxpayer wishes only to raise irrelevant or frivolous issues concerning that liability. A face-to-face CDP conference concerning a collection alternative, such as an installment agreement or an offer to compromise liability, will not be granted unless the alternative would be available to other taxpayers in similar circumstances. For example, because the IRS does not consider offers to compromise from taxpayers who have not filed required returns or have not made certain required deposits of tax, as set forth in Form 656, ''Offer in Compromise,'' no face-to-face conference will be offered to a taxpayer who wishes to make an offer to compromise but has not fulfilled those obligations. A face-to-face conference need not be granted if the taxpayer does not provide the required information set forth in A–C1(ii)(E) of paragraph (c)(2). See also A–C1(iii) of paragraph (c)(2).

(3) *Examples.* The following examples illustrate the principles of this paragraph (d):

Example 1. Individual A timely requests a CDP hearing concerning a NFTL filed with respect to A's 1998 income tax liability. Appeals employee B previously conducted a CDP hearing regarding a proposed levy for the 1998 income tax liability assessed against individual A. Because employee B's only prior involvement with individual A's 1998 income tax liability was in connection with a section 6330 CDP hearing, employee B may conduct the CDP hearing under section 6320 involving the NFTL filed for the 1998 income tax liability.

Example 2. Individual C timely requests a CDP hearing concerning a NFTL filed with respect to C's 1998 income tax liability assessed against individual C. Appeals employee D previously conducted a Collection Appeals Program (CAP) hearing regarding a NFTL filed with respect to C's 1998 income tax liability. Because employee D's prior involvement with individual C's 1998 income tax liability was in connection with a non-CDP hearing, employee D may not conduct the CDP hearing under section 6320 unless individual C waives the requirement that the hearing will be conducted by an Appeals officer or employee who has had no prior involvement with respect to C's 1998 income tax liability.

Example 3. Same facts as in *Example 2,* except that the prior CAP hearing only involved individual C's 1997 income tax liability and employment tax liabilities for 1998 reported on Form 941. Employee D would not be considered to have prior involvement because the prior CAP hearing in which she participated did not involve individual C's 1998 income tax liability.

Example 4. Appeals employee F is assigned to a CDP hearing concerning a NFTL filed with respect to a trust fund recovery penalty (TFRP) assessed pursuant to section 6672 against individual E. Appeals employee F participated in a prior CAP hearing involving individual E's 1999 income tax liability, and participated in a CAP hearing involving the employment taxes of business entity X, which incurred the employment tax liability to which the TFRP assessed against individual E relates. Appeals employee F would not be considered to have prior involvement because the prior CAP hearings in which he participated did not involve the TFRP assessed against individual E.

Example 5. Appeals employee G is assigned to a CDP hearing concerning a NFTL filed with respect to a TFRP assessed pursuant to section 6672 against individual H. In preparing for the CDP hearing, Appeals employee G reviews the Appeals case file concerning the prior CAP hearing involving the TFRP assessed pursuant to section 6672 against individual H. Appeals employee G is not deemed to have participated in the previous CAP hearing involving the TFRP assessed against individual H by such review.

(e) *Matters considered at CDP hearing*—(1) *In general.* Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to issuance of a determination, Appeals is required to obtain verification from the IRS office collecting the tax that the requirements of any applicable law or administrative procedure have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The taxpayer also may raise challenges to the existence or amount of the underlying liability for any tax period specified on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute the tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6330 or in any other previous administrative or judicial proceeding if the taxpayer participated meaningfully in such hearing or proceeding. Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

* * * * *

(3) * * *

A–E2. A taxpayer is entitled to challenge the existence or amount of the underlying liability for any tax period specified on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Receipt of a statutory notice of deficiency for this purpose means receipt in time to petition the Tax Court for a redetermination of the deficiency determined in the notice of deficiency. An opportunity to dispute the underlying liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability.

* * * * *

A–E6. Collection alternatives include, for example, a proposal to withdraw the NFTL in circumstances that will facilitate the collection of the tax liability, an installment agreement, an offer to compromise, the posting of a bond, or the substitution of other assets. A collection alternative is not available unless the alternative would be available to other taxpayers in similar circumstances. For example, the IRS does not consider an offer to compromise made by a taxpayer who, at the time of the CDP hearing, has not filed required returns or has not made certain required deposits of tax, as set forth in Form 656, ''Offer in Compromise.'' The collection alternative of an offer to compromise would not be available to such a taxpayer in a CDP hearing.

* * * * *

A–E7. The taxpayer may raise appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The existence or amount of the underlying liability for any tax period specified in the CDP Notice may be challenged only if the taxpayer did not already have an opportunity to dispute the tax liability. If the taxpayer previously received a CDP Notice under section 6330 with respect to the same tax and tax period and did not request a CDP hearing with respect to that earlier CDP Notice, the taxpayer has already had an opportunity to dispute the existence or amount of the underlying tax liability.

* * * * *

(f) * * *

(2) * * *

A–F5. In seeking Tax Court or district court review of a Notice of Determination, the taxpayer can only ask the court to consider an issue, including a challenge to the underlying tax liability, that was properly raised in the taxpayer's CDP hearing. An issue is not properly raised if the taxpayer fails to request consideration of the issue by Appeals, or if consideration is requested but the taxpayer fails to present to Appeals any evidence with respect to that issue after being given a reasonable opportunity to present such evidence.

Q–F6. What is the administrative record for purposes of court review?

A–F6. The case file, including written communications and information from the taxpayer or the taxpayer's authorized representative submitted in connection with the CDP hearing, notes made by an Appeals officer or employee of any oral communications with the taxpayer or the taxpayer's authorized representative and memoranda created by the Appeals officer or employee in connection with the CDP hearing, and any other documents or materials relied upon by the Appeals officer or employee in making the determination under section 6330(c)(3), will constitute the record in any court review of the Notice of Determination issued by Appeals.

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(i) * * *

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Q–I1. What must a taxpayer do to obtain an equivalent hearing?

A–I1. (i) A request for an equivalent hearing must be made in writing. A written request in any form that requests an equivalent hearing will be acceptable if it includes the information required in paragraph (ii) of this A–I1.

(ii) The request must be dated and must include the following information:

(A) The taxpayer's name, address, daytime telephone number (if any), and taxpayer identification number (SSN or EIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer is requesting an equivalent hearing with Appeals concerning the filing of the NFTL.

(E) The reason or reasons why the taxpayer disagrees with the filing of the NFTL.

(F) The signature of the taxpayer or the taxpayer's authorized representative.

(iii) The taxpayer must perfect any timely written request for an equivalent hearing that does not provide the required information set forth in paragraph (ii) of this A–I1 within a reasonable period of time after a request from the IRS. If the requested information is not provided within a reasonable period of time, the taxpayer's equivalent hearing request will be denied.

(iv) The taxpayer must affirm any timely written request for an equivalent hearing that is signed or alleged to have been signed on the taxpayer's behalf by the taxpayer's spouse or other unauthorized representative, and that otherwise meets the requirements set forth in paragraph (ii) of this A–I1, by the taxpayer's spouse or any other representative, by filing, within a reasonable time after a request from the IRS, a signed written affirmation that the request was originally submitted on the taxpayer's behalf. If the affirmation is not filed within a reasonable period of time, the equivalent hearing request will be denied with respect to the non-signing taxpayer.

* * * * *

Q–I7. When must a taxpayer request an equivalent hearing with respect to a CDP Notice issued under section 6320?

A–I7. A taxpayer must submit a written request for an equivalent hearing within the one-year period commencing the day after the end of the five-business-day period following the filing of the NFTL. This period is slightly different from the period for submitting a written request for an equivalent hearing with respect to a CDP Notice issued under section 6330. For a CDP Notice issued under section 6330, a taxpayer must submit a written request for an equivalent hearing within the one-year period commencing the day after the date of the CDP Notice issued under section 6330.

Q–I8. How will the timeliness of a taxpayer's written request for an equivalent hearing be determined?

A–I8. The rules and regulations under section 7502 and section 7503 will apply to determine the timeliness of the taxpayer's request for an equivalent hearing, if properly transmitted and addressed as provided in A–I10 of this paragraph (i)(2).

Q–I9. Is the one-year period within which a taxpayer must make a request for an equivalent hearing extended because the taxpayer resides outside the United States?

A–I9. No. All taxpayers who want an equivalent hearing concerning the filing of the NFTL must request the hearing within the one-year period commencing the day after the end of the five-business-day period following the filing of the NFTL.

Q–I10. Where must the written request for an equivalent hearing be sent?

A–I10. The written request for an equivalent hearing must be sent, or hand delivered (if permitted), to the IRS office and address as directed on the CDP Notice. If the address of the issuing office does not appear on the CDP Notice, the taxpayer should obtain the

address of the office to which the written request should be sent or hand delivered by calling, toll-free, 1–800–829–1040 and providing the taxpayer's identification number (SSN or EIN).

Q–I11. What will happen if the taxpayer does not request an equivalent hearing in writing within the one-year period commencing the day after the end of the five-business-day period following the filing of the NFTL?

A–I11. If the taxpayer does not request an equivalent hearing with Appeals within the one-year period commencing the day after the end of the five-business-day period following the filing of the NFTL, the taxpayer foregoes the right to an equivalent hearing with respect to the unpaid tax and tax periods shown on the CDP Notice. The taxpayer, however, may seek reconsideration by the IRS office collecting the tax, assistance from the National Taxpayer Advocate, or an administrative hearing before Appeals under its Collection Appeals Program or any successor program.

* * * * *

(j) *Effective date.* This section is applicable 30 days after the date final regulations are published in the **Federal Register** with respect to requests made for CDP hearings or equivalent hearings on or after the date 30 days after final regulations are published in the **Federal Register**.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–18469 Filed 9–15–05; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–150091–02]

RIN 1545–BB97

Miscellaneous Changes to Collection Due Process Procedures Relating to Notice and Opportunity for Hearing Prior to Levy

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the regulations relating to a taxpayer's right to a hearing before or after levy under section 6330 of the Internal Revenue Code of 1986. The proposed regulations make certain clarifying changes in the way collection due process (CDP) hearings are held and specify the period during which a taxpayer may request an equivalent hearing. The proposed regulations affect taxpayers against whose property or rights to property the Internal Revenue Service (IRS) intends to levy on or after January 19, 1999. This document also contains a notice of public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by December 15, 2005. Outlines of topics to be discussed at the public hearing scheduled for 10 a.m. on January 19, 2006 must be received by December 29, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–150091–02), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–150091–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (indicate IRS and REG–150091–02). The public hearing will be held in the IRS Auditorium, Internal Revenue Building (7th Floor), 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, call Laurence K. Williams, 202–622–3600 (not a toll-free number). Concerning submissions and/or to be placed on the building access list to attend the hearing, call Robin Jones, 202–622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to the provision of notice under section 6330 of the Internal Revenue Code to taxpayers of a right to a CDP hearing (CDP Notice) before levy. Final regulations (TD 8980) were published on January 18, 2002 in the **Federal Register** (67 FR 2549). The final regulations implemented certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105–206, 112 Stat. 685) (RRA 1998), including the addition of section 6330 to the Internal Revenue Code. The final regulations affected taxpayers against whose property or rights to property the IRS intends to levy.

Section 3401 of RRA 1998 also added section 6320 to the Internal Revenue Code. That statute provides for notice to taxpayers of a right to a hearing after the filing of a notice of Federal tax lien (NFTL). A number of the provisions in section 6330 concerning the conduct and judicial review of a CDP hearing are incorporated by reference in section 6320. On January 18, 2002, final regulations (TD 8979) under section 6320 were published in the **Federal Register** (67 FR 2558) along with the final regulations under section 6330.

Explanation of Provisions

A taxpayer is entitled to one CDP hearing with respect to the tax and tax period covered by a CDP Notice concerning a levy or a CDP Notice concerning the filing of a NFTL. The IRS Office of Appeals (Appeals) has conducted over 92,000 CDP hearings and more than 30,000 equivalent hearings since sections 6320 and 6330 became effective for collection actions initiated on and after January 19, 1999.

In general, the experience of the past six years with CDP hearings has demonstrated that there is a need for changes to allow Appeals to effectively and fairly handle the cases of taxpayers who raise issues of substance. Appeals has instituted many improvements in its processing of CDP cases and has conducted extensive training in an effort to provide careful, but timely, review of CDP cases, which currently are filed at a rate of approximately 2,450 per month. The proposed regulations, if adopted as final regulations, will increase efficiency without compromising the quality and fairness of review.

In many CDP cases, significant time is spent merely identifying the issues. Although the Form 12153 used to request a CDP hearing requires a taxpayer to state a reason or reasons for disagreeing with the proposed levy, many taxpayers either do not supply that information, or raise new issues during the CDP hearing process not identified on the hearing request. Delays result while taxpayers provide new supporting documentation and Appeals personnel reconsider prior conclusions in light of the new information. Cases of other taxpayers pending in Appeals are delayed because other work must be constantly rescheduled.

Cases are also delayed when taxpayers propose collection alternatives for which they are not eligible. The IRS does not consider offers in compromise or installment agreements from taxpayers who have failed to file required returns as of the date the offer or the proposed

installment agreement is submitted. See Publication 594, ''What You Should Know about the IRS Collection Process (Rev. 2–2004).'' Similarly, the IRS will not consider an offer in compromise from an in-business taxpayer unless the taxpayer has timely filed all returns and timely made all Federal tax deposits for two consecutive quarters. See Form 656, ''Offer in Compromise (Rev. 7–2004).'' The resources of Appeals are ineffectively utilized arranging and conducting face-to-face conferences requested by non-compliant taxpayers whose only complaint is the rejection of an offer to compromise or installment agreement for which they are not eligible.

Frivolous cases also cause unnecessary delays. During fiscal year 2004, 5.4 percent of the 32,226 CDP and equivalent-hearing cases Appeals handled involved taxpayers who were non-filers or raised only frivolous issues. Cases raising frivolous issues, in particular, consume a disproportionately large amount of time, because Appeals personnel must often read lengthy, frivolous submissions in search of any substantive issue buried within. Delays also result when taxpayers use face-to-face conferences as a venue for frivolous oration and harassment of Appeals personnel.

The proposed regulations attempt to address these and other problems that have become apparent during the first six years of CDP practice. The proposed changes are aimed at creating a more focused procedure that will allow Appeals to continue to provide careful review of proposed levies as the volume of cases increases.

A taxpayer must request a CDP hearing in writing. The current regulations require that a request for a CDP hearing include the taxpayer's name, address, and daytime telephone number, and that the request be dated and signed by either the taxpayer or the taxpayer's authorized representative. Section 301.6330–1(c)(2), Q&A–C1. A Form 12153, ''Request for a Collection Due Process Hearing,'' is included with the CDP Notice sent to the taxpayer pursuant to section 6330. The Form 12153 requests (1) the taxpayer's name, address, daytime telephone number, and taxpayer identification number (SSN or EIN), (2) the type of tax involved, (3) the tax period at issue, (4) a statement that the taxpayer requests a hearing with Appeals concerning the proposed levy, and (5) the reason or reasons why the taxpayer disagrees with the proposed levy. Although taxpayers are encouraged to use a Form 12153 in requesting a CDP hearing, the current regulations do not require the use of Form 12153.

Section 301.6330–1(c)(2), A–C1, of the proposed regulations requires taxpayers to state their reasons for disagreement with the proposed levy whether or not a Form 12153 is used to request a CDP hearing. In addition, a taxpayer who fails to sign a timely CDP hearing request because the request is made by a spouse or other unauthorized representative must affirm in writing that the request was originally submitted on the taxpayer's behalf. Failure to provide the written affirmation within a reasonable time after a request from Appeals will result in the denial of a CDP hearing for that taxpayer.

A CDP hearing is to be conducted by an Appeals officer or employee who has had no ''prior involvement'' with respect to the tax for the tax periods to be covered by the hearing, unless the taxpayer waives this requirement. Section 301.6330–1(d)(2), A-D4 of the current regulations provides that ''prior involvement'' by an Appeals officer or employee includes participation or involvement in an Appeals hearing that the taxpayer may have had with respect to the tax and tax period shown on the CDP Notice, other than a CDP hearing held under either section 6320 or section 6330. It is important that ''prior involvement'' be construed in a manner that reasonably protects against predisposition but at the same time does not disqualify too broad a range of Appeals personnel. A broad standard of ''prior involvement'' would lead to uncertain application, could result in the disqualification of an entire Appeals office, many of which have small staffs, and could make it difficult to conduct the CDP hearing. Section 301.6330–1(d)(2), A–D4 of the proposed regulations provides that prior involvement exists only when the taxpayer, the tax liability and the tax period shown on the CDP Notice also were at issue in the prior non-CDP hearing or proceeding, and the Appeals officer or employee actually participated in the prior hearing or proceeding. Examples are provided in § 301.6330–1(d)(3) of the proposed regulations.

Section 301.6330–1(d)(2), A–D7, of the proposed regulations clarifies that a face-to-face conference is merely one aspect of a CDP hearing under section 6330 and is not by itself the entire CDP hearing.

A–D7 of the proposed regulations also provides that, in all cases, the Appeals officer or employee will review the taxpayer's request for a CDP hearing, the case file, other written communications from the taxpayer, and any notes of oral communications with the taxpayer or the taxpayer's representative. If no face-to-face or telephonic conference is held, review of those documents will constitute the CDP hearing for purposes of section 6330(b).

A–D7 of the proposed regulations further clarifies that when a business taxpayer is offered an opportunity for a face-to-face conference it will be held at the Appeals office closest to the taxpayer's principal place of business. The current regulations have been misinterpreted by some taxpayers as requiring the IRS to hold a face-to-face conference at the taxpayer's principal place of business.

Q&A–D8 of the proposed regulations is new. It describes specific circumstances in which Appeals will not hold a face-to-face conference with the taxpayer or the taxpayer's representative because a conference will serve no useful purpose. The experience of Appeals is that although most taxpayers request face-to-face conferences, they are sometimes difficult to schedule on a date and at a time that is convenient for the taxpayer. In some of these cases, taxpayers or their representatives have used the scheduling of a face-to-face conference as a tactic to delay the IRS's collection efforts. In other cases, taxpayers have requested a face-to-face conference merely to raise frivolous arguments concerning the Federal tax system or to request collection alternatives for which they do not qualify. Q&A-D8 of the proposed regulations provides that a face-to-face conference need not be offered if the taxpayer or the taxpayer's representative raises only frivolous arguments concerning the Federal tax system. See the IRS Internet site, *http://www.irs.gov/pub/irs-utl/friv_tax.pdf,* for examples of frivolous arguments. A face-to-face conference also will not be granted if the taxpayer proposes collection alternatives that would not be available to other taxpayers in similar circumstances. A face-to-face conference need not be granted if the taxpayer does not provide in the written request for a CDP hearing, as perfected, the required information set forth in A–C1(ii)(E) of paragraph (c)(2) of the proposed regulations.

In addition, a face-to-face conference will not be held at the location closest to the taxpayer's residence or principal place of business if all Appeals officers or employees at that location are considered to have prior involvement as provided in A–D4. In this case, the taxpayer will be offered a hearing by telephone or correspondence, or some combination thereof. The taxpayer may be able to obtain a face-to-face

conference at the Appeals office closest to the taxpayer's residence or principal place of business under these circumstances if the taxpayer waives the requirement of section 6330(b)(3) concerning impartiality of the Appeals officer or employee. Appeals will offer the taxpayer a face-to-face conference at another Appeals office if in the exercise of its discretion Appeals would have offered the taxpayer a face-to-face conference at the original location.

With the foregoing exceptions, it is anticipated that a face-to-face conference will ordinarily be offered with respect to any relevant issues or collection alternatives for which the taxpayer qualifies.

Sections 301.6330–1(e)(1) and 301.6330–1(e)(3), A–E2 and A–E7 have been changed to more closely follow the language of section 6330(c)(2)(B). These changes are necessary because these regulations have been misinterpreted as defining the underlying tax liability that may be considered at the CDP hearing under section 6330(c)(2)(B) to be the tax liability listed on the CDP Notice. The existing regulations, which refer to tax liability on the CDP Notice, were intended merely to make clear that taxpayers may only challenge taxes or tax periods listed on the CDP Notice, not to supply a substantive definition of underlying tax liability. Section 301.6330–1(e)(3), A–E6 has been amended to clarify that taxpayers who receive CDP hearings can only qualify for collection alternatives available generally to taxpayers in similar circumstances.

The experience of the past six years has revealed that many taxpayers raise an issue with Appeals but fail to furnish any documentation or evidence with respect to the issue despite being given a reasonable period to do so. For example, a taxpayer may request an installment agreement, but when an Appeals officer or employee requests financial data necessary to determine eligibility for the installment agreement, the taxpayer may not comply with the request. Or a taxpayer may dispute liability for a tax period by claiming entitlement to deductions, but provide no substantiation for the deductions in response to requests from Appeals. Current § 301.6330–1(f)(2), A–F5 provides that a taxpayer may not seek judicial review of an issue that he has not raised during the CDP hearing. A–F5 is revised to clarify that in order to obtain judicial review, a taxpayer must not only bring the issue to the attention of Appeals but must also submit, if requested, evidence with respect to that issue. Under revised A–F5, if the taxpayer does not provide Appeals any evidence with respect to the issue after being given a reasonable opportunity to submit such evidence, then he may not ask a court to consider the issue.

There has been some confusion about what documents Appeals should retain, and what notations the Appeals officer or employee conducting the hearing should make, in order to provide a judicially reviewable administrative record. A new Q&A–F6 has been added to specify the contents of the administrative record required for court review.

The IRS receives a number of tardy requests for CDP hearings. The changes to § 301.6330–1(i)(2) explain how these requests will be treated. The proposed amendments to the regulations add a new Q&A–I1 to § 301.6330–1(i)(2) to explain that a taxpayer must request an equivalent hearing in writing. A taxpayer may obtain an equivalent hearing if the 30-day period described in section 6330(a)(3) for requesting a CDP hearing has expired. Unlike an Appeals determination in a CDP hearing, the Appeals decision in an equivalent hearing is not reviewable in court. Under new Q&A–I1, the IRS is not required to treat a late-filed CDP request as a request for an equivalent hearing. Section 301.6330–1(c)(2), A–C7 has been amended to require that the taxpayer be notified of the right to an equivalent hearing in all cases in which a tardy request for a CDP hearing is received. It is expected that the IRS will either send the taxpayer a letter or orally inform the taxpayer that the CDP hearing request is untimely and ask if the taxpayer wishes to have an equivalent hearing. If the taxpayer elects to have an equivalent hearing, the IRS will treat the CDP hearing request as a request for an equivalent hearing without requiring the taxpayer to make an additional written request.

Current Q&A–I1 through I5 are renumbered Q&A–I2 through I6. The proposed regulations add Q&A–I7 to § 301.6330–1(i)(2) to clarify that the period during which a taxpayer may obtain an equivalent hearing is not indefinite. The equivalent hearing procedure is not provided by statute but, consistent with the legislative history of RRA 1998, was adopted in order to accommodate taxpayers who failed timely to exercise their right to a CDP hearing. The equivalent hearing was meant to occur near the time a CDP hearing held pursuant to a timely request would have occurred, because it was meant to address the same matters that would have been addressed at a CDP hearing. The procedure was not meant to provide a hearing right that could be exercised months or years after the circumstances that precipitated the proposed levy have passed. A hearing before Appeals at a later time may be obtained under the Collection Appeals Program. Therefore, proposed Q&A–I7 limits to one year the period during which a taxpayer may request an equivalent hearing. The period commences the day after the date of the CDP Notice issued under section 6330.

Because the time for requesting an equivalent hearing will be limited, the proposed regulations add new Q&A–I8, Q&A–I9, Q&A–I10 and Q&A–I11 to § 301.6330–1(i)(2) to provide the same rules governing mailing, delivery and determination of timeliness that apply to requests for CDP hearings. Unlike existing § 301.6330–1(c)(2), A–C6, new A–I10 does not identify the officials to whom to send an equivalent hearing request if the CDP Notice does not specify where to send the request. Because the identity and the address of the person to whom the request should be sent may change in the future, taxpayers will be able to obtain more current information by calling the 1–800 number listed in A–I10. Section 301.6330–1(c)(2), A–C6 also has been revised in the proposed regulations to provide that taxpayers should call the 1–800 number to obtain the address to which the CDP hearing request should be sent.

The proposed regulations are effective the date 30 days after final regulations are published in the **Federal Register** with respect to requests for CDP hearings or equivalent hearings made on or after the date 30 days after final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any

electronic and written comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 19, 2006, at 10 a.m. in the IRS Auditorium, Internal Revenue Building (7th Floor), 1111 Constitution Avenue NW., Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having a visitor's name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** caption.

An outline of the topics to be discussed and the time to be devoted to each topic must be submitted by any person who wishes to present oral comments at the hearing. Outlines must be received by December 29, 2005.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving requests to speak has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Laurence K. Williams, Office of Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy and Summonses Division).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6330–1 is proposed to be amended as follows:

1. Paragraph (c)(2) A–C1, Q&A–C6 and A–C7 are revised.

2. Paragraph (d)(2) A–D4 and A–D7 are revised.

3. Paragraph (d)(2) Q&A–D8 is added.

4. Paragraph (d)(3) is added.

5. Paragraph (e)(1) is revised.

6. Paragraph (e)(3) A–E2, A–E6 and A–E7 are revised.

7. Paragraph (f)(2) A–F5 is revised.

8. Paragraph (f)(2) Q&A–F6 is added.

9. Paragraph (i)(2) Q&A–I1 through Q&A–I5 are redesignated as Q&A–I2 through Q&A–I6, a new paragraph (i)(2) Q&A–I1 and new paragraphs Q&A–I7 through Q&A–I11 are added.

10. Paragraph (j) is revised.

§ 301.6330–1 Notice and opportunity for hearing prior to levy.

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(c) * * *

(2) * * *

A–C1. (i) The taxpayer must make a request in writing for a CDP hearing. The request for a CDP hearing shall include the information specified in A–C1(ii) of this paragraph (c)(2). See A–D7 and A–D8 of paragraph (d)(2).

(ii) The written request for a CDP hearing must be dated and must include the following information:

(A) The taxpayer's name, address, daytime telephone number (if any), and taxpayer identification number (SSN or EIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer requests a hearing with Appeals concerning the proposed levy.

(E) The reason or reasons why the taxpayer disagrees with the proposed levy.

(F) The signature of the taxpayer or the taxpayer's authorized representative.

(iii) The taxpayer must perfect any timely written request for a CDP hearing that does not provide the required information set forth in A-C1(ii) of this paragraph within a reasonable period of time after a request from the IRS.

(iv) Taxpayers are encouraged to use a Form 12153, ''Request for a Collection Due Process Hearing,'' in requesting a CDP hearing so that the request can be readily identified and forwarded to Appeals. Taxpayers may obtain a copy of Form 12153 by contacting the IRS office that issued the CDP Notice, by downloading a copy from the IRS Internet site, *http://www.irs.gov/pub/irs-pdf/f12153.pdf*, or by calling, toll-free, 1–800–829–3676.

(v) The taxpayer must affirm any timely written request for a CDP hearing which is signed or alleged to have been signed on the taxpayer's behalf by the taxpayer's spouse or other unauthorized representative by filing, within a reasonable time after a request from the IRS, a signed, written affirmation that the request was originally submitted on the taxpayer's behalf. If the affirmation is not filed within a reasonable period of time after a request, the CDP hearing request will be denied with respect to the non-signing taxpayer.

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Q–C6. Where must the written request for a CDP hearing be sent?

A–C6. The written request for a CDP hearing must be sent, or hand delivered (if permitted), to the IRS office and address as directed on the CDP Notice. If the address of that office does not appear on the CDP Notice, the taxpayer should obtain the address of the office to which the written request should be sent or hand delivered by calling, toll-free, 1–800–829–1040 and providing the taxpayer's identification number (SSN or TIN).

* * * * *

A–C7. If the taxpayer does not request a CDP hearing in writing within the 30-day period that commences on the day after the date of the CDP Notice, the taxpayer foregoes the right to a CDP hearing under section 6330 with respect to the unpaid tax and tax periods shown on the CDP Notice. If the request for CDP hearing is received after the 30-day period, the taxpayer will be notified of the untimely request and of the right to an equivalent hearing. See paragraph (i) of this section.

* * * * *

(d) * * *

(2) * * *

A–D4. Prior involvement by an Appeals officer or employee includes participation or involvement in an Appeals hearing (other than a CDP hearing held under either section 6320 or section 6330) that the taxpayer may have had with respect to the tax and tax period shown on the CDP Notice. Prior involvement exists only when the taxpayer, the tax liability and the tax period at issue in the CDP hearing also were at issue in the prior non-CDP hearing or proceeding, and the Appeals officer or employee actually participated in the prior hearing or proceeding.

* * * * *

A–D7. Except as provided in A-D8 of this paragraph (d)(2), a taxpayer who presents in the CDP hearing request relevant, non-frivolous reasons for disagreement with the proposed levy will ordinarily be offered an opportunity for a face-to-face conference at the Appeals office closest to taxpayer's residence. A business taxpayer will ordinarily be offered an opportunity for a face-to-face conference at the Appeals office closest to the taxpayer's principal place of business. If

that is not satisfactory to the taxpayer, the taxpayer will be given an opportunity for a hearing by telephone or by correspondence. In all cases, the Appeals officer or employee will review the case file, which includes the taxpayer's request for a CDP hearing, any other written communications from the taxpayer or the taxpayer's authorized representative, and any notes made by Appeals officers or employees of any oral communications with the taxpayer or the taxpayer's authorized representative. If no face-to-face or telephonic conference is held, review of those documents will constitute the CDP hearing for purposes of section 6330(b).

Q–D8. In what circumstances will a face-to-face CDP conference not be granted?

A–D8. A taxpayer is not entitled to a face-to-face CDP conference at a location other than as provided in A–D7 of this paragraph (d)(2) and this A–D8. If all Appeals officers or employees at the location provided for in A–D7 of this paragraph have had prior involvement with the taxpayer as provided in A–D4 of this paragraph, the taxpayer will not be offered a face-to-face meeting at that location, unless the taxpayer elects to waive the requirement of section 6330(b)(3). The taxpayer will be offered a face-to-face conference at another Appeals office if Appeals in the exercise of its discretion would have offered the taxpayer a face-to-face conference at the location provided in A–D7. A face-to-face CDP conference concerning a taxpayer's underlying liability will not be granted if the request for a hearing or other taxpayer communication indicates that the taxpayer wishes only to raise irrelevant or frivolous issues concerning that liability. A face-to-face CDP conference concerning a collection alternative, such as an installment agreement or an offer to compromise liability, will not be granted unless the alternative would be available to other taxpayers in similar circumstances. For example, because the IRS does not consider offers to compromise from taxpayers who have not filed required returns or have not made certain required deposits of tax, as set forth in Form 656, ''Offer in Compromise,'' no face-to-face conference will be offered to a taxpayer who wishes to make an offer to compromise but has not fulfilled those obligations. A face-to-face conference need not be granted if the taxpayer does not provide the required information set forth in A–C1(ii)(E) of paragraph (c)(2). See also A–C1(iii) of paragraph C–2.

(3) *Examples.* The following examples illustrate the principles of this paragraph (d):

Example 1. Individual A timely requests a CDP hearing concerning a proposed levy for the 1998 income tax liability assessed against individual A. Appeals employee B previously conducted a CDP hearing regarding a NFTL filed with respect to A's 1998 income tax liability. Because employee B's only prior involvement with individual A's 1998 income tax liability was in connection with a section 6320 CDP hearing, employee B may conduct the CDP hearing under section 6330 involving the proposed levy for the 1998 income tax liability.

Example 2. Individual C timely requests a CDP hearing concerning a proposed levy for the 1998 income tax liability assessed against individual C. Appeals employee D previously conducted a Collection Appeals Program (CAP) hearing regarding a NFTL filed with respect to C's 1998 income tax liability. Because employee D's prior involvement with individual C's 1998 income tax liability was in connection with a non-CDP hearing, employee D may not conduct the CDP hearing under section 6330 unless individual C waives the requirement that the hearing will be conducted by an Appeals officer or employee who has had no prior involvement with respect to C's 1998 income tax liability.

Example 3. Same facts as in *Example 2*, except that the prior CAP hearing only involved individual C's 1997 income tax liability and employment tax liabilities for 1998 reported on Form 941. Employee D would not be considered to have prior involvement because the prior CAP hearing in which she participated did not involve individual C's 1998 income tax liability.

Example 4. Appeals employee F is assigned to a CDP hearing concerning a proposed levy for a trust fund recovery penalty (TFRP) assessed pursuant to section 6672 against individual E. Appeals employee F participated in a prior CAP hearing involving individual E's 1999 income tax liability, and participated in a CAP hearing involving the employment taxes of business entity X, which incurred the employment tax liability to which the TFRP assessed against individual E relates. Appeals employee F would not be considered to have prior involvement because the prior CAP hearings in which he participated did not directly involve the TFRP assessed against individual E.

Example 5. Appeals employee G is assigned to a CDP hearing concerning a proposed levy for a TFRP assessed pursuant to section 6672 against individual H. In preparing for the CDP hearing, Appeals employee G reviews the Appeals case file concerning the prior CAP hearing involving the TFRP assessed pursuant to section 6672 against individual H. Appeals employee G is not deemed to have participated in the previous CAP hearing involving the TFRP assessed against individual H by such review.

(e) *Matters considered at CDP hearing*—(1) *In general.* Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to issuance of a determination, Appeals is required to obtain verification from the IRS office collecting the tax that the requirements of any applicable law or administrative procedure have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the proposed levy, and offers of collection alternatives. The taxpayer also may raise challenges to the existence or amount of the underlying liability for any tax period specified on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute the tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6320 or in any other previous administrative or judicial proceeding if the taxpayer participated meaningfully in such hearing or proceeding. Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

* * * * *

(3) * * *

A–E2. A taxpayer is entitled to challenge the existence or amount of the underlying liability for any tax period specified on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Receipt of a statutory notice of deficiency for this purpose means receipt in time to petition the Tax Court for a redetermination of the deficiency determined in the notice of deficiency. An opportunity to dispute the underlying liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability.

* * * * *

A–E6. Collection alternatives include, for example, a proposal to withhold the proposed levy or future collection action in circumstances that will facilitate the collection of the tax liability, an installment agreement, an offer to compromise, the posting of a bond, or the substitution of other assets. A collection alternative is not available unless the alternative would be available to other taxpayers in similar circumstances. For example, the IRS does not consider an offer to compromise made by a taxpayer who, at

the time of the CDP hearing, has not filed required returns or has not made certain required deposits of tax, as set forth in Form 656, ''Offer in Compromise.'' The collection alternative of an offer to compromise would not be available to such a taxpayer in a CDP hearing.

* * * * *

A–E7. The taxpayer may raise appropriate spousal defenses, challenges to the appropriateness of the proposed collection action, and offers of collection alternatives. The existence or amount of the underlying liability for any tax period specified in the CDP Notice may be challenged only if the taxpayer did not already have an opportunity to dispute the tax liability. If the taxpayer previously received a CDP Notice under section 6320 with respect to the same tax and tax period and did not request a CDP hearing with respect to that earlier CDP Notice, the taxpayer has already had an opportunity to dispute the existence or amount of the underlying tax liability.

* * * * *

(f) * * *

(2) * * *

A–F5. In seeking Tax Court or district court review of a Notice of Determination, the taxpayer can only ask the court to consider an issue, including a challenge to the underlying tax liability, that was properly raised in the taxpayer's CDP hearing. An issue is not properly raised if the taxpayer fails to request consideration of the issue by Appeals, or if consideration is requested but the taxpayer fails to present to Appeals any evidence with respect to that issue after being given a reasonable opportunity to present such evidence.

Q–F6. What is the administrative record for purposes of court review?

A–F6. The case file, including written communications and information from the taxpayer or the taxpayer's authorized representative submitted in connection with the CDP hearing, notes made by an Appeals officer or employee of any oral communications with the taxpayer or the taxpayer's authorized representative and memoranda created by the Appeals officer or employee in connection with the CDP hearing, and any other documents or materials relied upon by the Appeals officer or employee in making the determination under section 6330(c)(3), will constitute the record in any court review of the Notice of Determination issued by Appeals.

(i) * * *

(2) * * *

Q–I1. What must a taxpayer do to obtain an equivalent hearing?

A–I1. (i) A request for an equivalent hearing must be made in writing. A written request in any form that requests an equivalent hearing will be acceptable if it includes the information required in paragraph (ii) of this A–I1.

(ii) The request must be dated and must include the following information:

(A) The taxpayer's name, address, daytime telephone number (if any), and taxpayer identification number (SSN or EIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer is requesting an equivalent hearing with Appeals concerning the levy.

(E) The reason or reasons why the taxpayer disagrees with the proposed levy.

(F) The signature of the taxpayer or the taxpayer's authorized representative.

(iii) The taxpayer must perfect any timely written request for an equivalent hearing that does not provide the required information set forth in paragraph (ii) of this A–I1 within a reasonable period of time after a request from the IRS. If the requested information is not provided within a reasonable period of time, the taxpayer's equivalent hearing request will be denied.

(iv) The taxpayer must affirm any timely written request for an equivalent hearing that is signed or alleged to have been signed on the taxpayer's behalf by the taxpayer's spouse or other unauthorized representative, and that otherwise meets the requirements set forth in paragraph (ii) of this A–I1, by filing, within a reasonable time after a request from the IRS, a signed written affirmation that the request was originally submitted on the taxpayer's behalf. If the affirmation is not filed within a reasonable period of time, the equivalent hearing request will be denied with respect to the non-signing taxpayer.

* * * * *

Q–I7. When must a taxpayer request an equivalent hearing with respect to a CDP Notice issued under section 6330?

A–I7. A taxpayer must submit a written request for an equivalent hearing within the one-year period commencing the day after the date of the CDP Notice issued under section 6330. This period is slightly different from the period for submitting a written request for an equivalent hearing with respect to a CDP Notice issued under section 6320. For a CDP Notice issued under section 6320, a taxpayer must submit a written request for an equivalent hearing within the one-year period commencing the day after the end of the five-business-day period following the filing of the NFTL.

Q–I8. How will the timeliness of a taxpayer's written request for an equivalent hearing be determined?

A–I8. The rules and regulations under section 7502 and section 7503 will apply to determine the timeliness of the taxpayer's request for an equivalent hearing, if properly transmitted and addressed as provided in A–I10 of this paragraph (i)(2).

Q–I9. Is the one-year period within which a taxpayer must make a request for an equivalent hearing extended because the taxpayer resides outside the United States?

A–I9. No. All taxpayers who want an equivalent hearing must request the hearing within the one-year period commencing the day after the date of the CDP Notice issued under section 6330.

Q–I10. Where must the written request for an equivalent hearing be sent?

A–I10. The written request for an equivalent hearing must be sent, or hand delivered (if permitted), to the IRS office and address as directed on the CDP Notice. If the address of the issuing office does not appear on the CDP Notice, the taxpayer should obtain the address of the office to which the written request should be sent or hand delivered by calling, toll-free, 1–800–829–1040 and providing the taxpayer's identification number (SSN or EIN).

Q–I11. What will happen if the taxpayer does not request an equivalent hearing in writing within the one-year period commencing the day after the date of the CDP Notice issued under section 6330?

A–I11. If the taxpayer does not request an equivalent hearing with Appeals within the one-year period commencing the day after the date of the CDP Notice issued under section 6330, the taxpayer foregoes the right to an equivalent hearing with respect to the unpaid tax and tax periods shown on the CDP Notice. The taxpayer, however, may seek reconsideration by the IRS office collecting the tax, assistance from the National Taxpayer Advocate, or an administrative hearing before Appeals under its Collection Appeals Program or any successor program.

* * * * *

(j) *Effective date.* This section is applicable the date 30 days after the date final regulations are published in the **Federal Register** with respect to requests made for CDP hearings or equivalent hearings on or after the date

30 days after final regulations are published in the **Federal Register**.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–18470 Filed 9–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 207

[DFARS Case 2003–D044]

Defense Federal Acquisition Regulation Supplement; Acquisition Planning

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text on acquisition planning. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before November 15, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003–D044, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil.* Include DFARS Case 2003–D044 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, (703) 602–0302.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm.*

This proposed rule is a result of the DFARS Transformation initiative. The proposed DFARS changes—

- Increase the dollar thresholds for preparation of written acquisition plans;
- Update acquisition planning requirements for consistency with changes to the DoD 5000 series publications;
- Delete unnecessary text relating to contract administration and class justifications for other than full and open competition;
- Clarify requirements for funding of leases; and
- Delete text addressing the contents of written acquisition plans. Text on this subject will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). Additional information on PGI is available at *http://www.acq.osd.mil/dpap/dars/pgi.*

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule addresses internal DoD requirements for acquisition planning. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D044.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 207

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR Part 207 as follows:

1. The authority citation for 48 CFR Part 207 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 207—ACQUISITION PLANNING

207.102 [Removed]

2. Section 207.102 is removed.

3. Section 207.103 is revised to read as follows:

207.103 Agency-head responsibilities.

(d)(i) Prepare written acquisition plans for—

(A) Acquisitions for development, as defined in FAR 35.001, when the total cost of all contracts for the acquisition program is estimated at $10 million or more;

(B) Acquisitions for production or services when the total cost of all contracts for the acquisition program is estimated at $50 million or more for all years or $25 million or more for any fiscal year; and

(C) Any other acquisition considered appropriate by the department or agency.

(ii) Written plans are not required in acquisitions for a final buy out or one-time buy. The terms ''final buy out'' and ''one-time buy'' refer to a single contract that covers all known present and future requirements. This exception does not apply to a multiyear contract or a contract with options or phases.

(e) Prepare written acquisition plans for acquisition programs meeting the thresholds of paragraphs (d)(i)(A) and (B) of this section on a program basis. Other acquisition plans may be written on either a program or an individual contract basis.

(g) The program manager, or other official responsible for the program, has overall responsibility for acquisition planning.

(h) For procurement of conventional ammunition, as defined in DoDD 5160.65, the Single Manager for Conventional Ammunition (SMCA) will review the acquisition plan to determine if it is consistent with retaining national technology and industrial base capabilities in accordance with 10 U.S.C. 2304(c)(3) and section 806 of

Public Law 105–261. The department or agency—

(i) Shall submit the acquisition plan to the address in PGI 207.103(h); and

(ii) Shall not proceed with the procurement until the SMCA provides written concurrence with the acquisition plan. In the case of a non-concurrence, the SCMA will resolve issues with the Army Office of the Executive Director for Conventional Ammunition.

207.104 [Removed]

4. Section 207.104 is removed.

5. Section 207.105 is revised to read as follows:

207.105 Contents of written acquisition plans.

In addition to the requirements of FAR 7.105, planners shall follow the procedures at PGI 207.105.

6. Section 207.471 is amended by revising paragraphs (b) and (c) to read as follows:

207.471 Funding requirements.

* * * * *

(b) DoD leases are either capital leases or operating leases. See FMR 7000.14–R, Volume 4, Chapter 7, Section 070207.

(c) Capital leases are essentially installment purchases of property. Use procurement funds for capital leases, as these are essentially installment purchases of property.

[FR Doc. 05–18477 Filed 9–15–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 216

[DFARS Case 2003–D078]

Defense Federal Acquisition Regulation Supplement; Types of Contracts

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text on the selection and use of contract types. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before November 15, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003–D078, using any of the following methods:

○ Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

○ Defense Acquisition Regulations Web Site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. Follow the instructions for submitting comments.

○ E-mail: *dfars@osd.mil*. Include DFARS Case 2003–D078 in the subject line of the message.

○ Fax: (703) 602–0350.

○ Mail: Defense Acquisition Regulations Council, Attn: Ms. Robin Schulze, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

○ Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, (703) 602–0326.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm*.

This proposed rule is a result of the DFARS Transformation initiative. The proposed DFARS changes—

○ Streamline text on the use of economic price adjustment clauses;

○ Increase, from 3 to 5 years, the standard maximum ordering period under basic ordering agreements;

○ Delete obsolete text on the use of cost-plus-fixed-fee contracts for environmental restoration;

○ Delete unnecessary text on design stability and use of incentive provisions; and

○ Delete procedures for selecting contract type and for use of special economic price adjustment clauses, incentive contracts, and basic ordering agreements. Text on these subjects will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). Additional information on PGI is available at *http://www.acq.osd.mil/dpap/dars/pgi*.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule updates and streamlines DFARS text on the use of various contract types, but makes no significant change to DoD contracting policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D078.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 216

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR part 216 as follows:

1. The authority citation for 48 CFR part 216 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 216—TYPES OF CONTRACTS

216.104 [Removed]

2. Section 216.104 is removed.

3. Section 216.104–70 is revised to read as follows:

216.104–70 Research and development.

Follow the procedures at PGI 216.104–70 for selecting the appropriate research and development contract type.

4. Section 216.203–4 is revised to read as follows:

216.203–4 Contract clauses.

(1) Generally, use the clauses at FAR 52.216–2, Economic Price Adjustment—Standard Supplies, FAR 52.216–3, Economic Price Adjustment—Semistandard Supplies, and FAR 52.216–4, Economic Price Adjustment—Labor and Material, only when—

(i) The total contract price exceeds the simplified acquisition threshold; and

(ii) Delivery or performance will not be completed within 6 months after contract award.

(2) Follow the procedures at PGI 216.203–4 when using an economic price adjustment clause based on cost indexes of labor or material.

5. Section 216.306 is amended by revising paragraph (c)(ii) to read as follows:

216.306 Cost-plus-fixed-fee contracts.

(c) * * *

(ii) The prohibition in paragraph (c)(i) of this section does not apply to contracts specifically approved in writing, setting forth the reasons therefor, in accordance with the following:

(A) The Secretaries of the military departments are authorized to approve such contracts that are for environmental work only, provided the environmental work is not classified as construction, as defined by 10 U.S.C. 2801.

(B) The Secretary of Defense or designee must approve such contracts that are not for environmental work only or are for environmental work classified as construction.

6. Sections 216.402–2 through 216.403–2 are revised to read as follows:

216.402–2 Technical performance incentives.

See PGI 216.402–2 for guidance on establishing performance incentives.

216.403 Fixed-price incentive contracts.

216.403–2 Fixed-price incentive (successive targets) contracts.

See PGI 216.403–2 for guidance on the use of fixed-price incentive (successive targets) contracts.

216.404 [Removed]

7. Section 216.404 is removed.

8. Section 216.405–1 is revised to read as follows:

216.405–1 Cost-plus-incentive-fee contracts.

See PGI 216.405–1 for guidance on the use of cost-plus-incentive-fee contracts.

9. Section 216.405–2 is revised to read as follows:

216.405–2 Cost-plus-award-fee contracts.

(b) *Application.* The cost-plus-award-fee (CPAF) contract may include provisional award fee payments. A provisional award fee payment is a payment made within an evaluation period prior to a final evaluation for that period. The contracting officer may include provisional award fee payments in a CPAF contract on a case-by-case basis, provided those payments—

(i) Are made no more frequently than monthly;

(ii) Are limited to no more than—

(A) For the initial award fee evaluation period, 50 percent of the award fee available for that period; and

(B) For subsequent award fee evaluation periods, 80 percent of the evaluation score for the prior evaluation period times the award fee available for the current period, *e.g.*, if the contractor received 90 percent of the award fee available for the prior evaluation period, provisional payments for the current period shall not exceed 72 percent (90 percent × 80 percent) of the award fee available for the current period;

(iii) Are superceded by an interim or final award fee evaluation for the applicable evaluation period. If provisional payments have exceeded the payment determined by the evaluation score for the applicable period, the contracting officer shall collect the debt in accordance with FAR 32.606; and

(iv) May be discontinued, or reduced in such amounts deemed appropriate by the contracting officer, when the contracting officer determines that the contractor will not achieve a level of performance commensurate with the provisional payment. The contracting officer shall notify the contractor in writing of any discontinuance or reduction in provisional award fee payments.

(c) *Limitations.*

(i) The CPAF contract shall not be used—

(A) To avoid—

(1) Establishing cost-plus-fixed-fee contracts when the criteria for cost-plus-fixed-fee contracts apply; or

(2) Developing objective targets so a cost-plus-incentive-fee contract can be used; or

(B) For either engineering development or operational system development acquisitions that have specifications suitable for simultaneous research and development and production, except a CPAF contract may be used for individual engineering development or operational system development acquisitions ancillary to the development of a major weapon system or equipment, where—

(1) It is more advantageous; and

(2) The purpose of the acquisition is clearly to determine or solve specific problems associated with the major weapon system or equipment.

(ii) Do not apply the weighted guidelines method to CPAF contracts for either the base (fixed) fee or the award fee.

(iii) The base fee shall not exceed 3 percent of the estimated cost of the contract exclusive of the fee.

(S–70) See PGI 216.405–2 for guidance on the use of CPAF contracts.

10. Section 216.470 is revised to read as follows:

216.470 Other applications of award fees.

See PGI 216.470 for guidance on other applications of award fees.

11. Section 216.703 is revised to read as follows:

216.703 Basic ordering agreements.

(c) *Limitations.* The period during which orders may be placed against a basic ordering agreement may not exceed 5 years.

(d) *Orders.* Follow the procedures at PGI 216.703(d) for issuing orders under basic ordering agreements.

[FR Doc. 05–18473 Filed 9–15–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 217 and 252

[DFARS Case 2003–D079]

Defense Federal Acquisition Regulation Supplement; Special Contracting Methods

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text on the use of special contracting methods. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before November 15, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003–D079, using any of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

• Defense Acquisition Regulations Web site: *http://emissary.acq.osd.mil/*

dar/dfars.nsf/pubcomm. Follow the instructions for submitting comments.

- E-mail: *dfars@osd.mil.* Include DFARS Case 2003–D079 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Robin Schulze, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, (703) 602–0326.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm.*

This proposed rule is a result of the DFARS Transformation initiative. The proposed DFARS changes—

- Clarify text on the use of option clauses for industrial capability production planning;
- Delete unnecessary text on determinations for interagency acquisitions under the Economy Act;
- Delete restrictive requirements relating to the use of master agreements for vessel repair;
- Delete obsolete procedures for acquisition of bakery and dairy products;
- Lower the level for approval of profit on undefinitized contract actions for which substantial performance has been completed; and
- Delete guidance on the use of options; and procedures for preparation of master agreements and job orders, for breakout and acquisition of spare parts, and for acquisition of work over and above contract requirements. Text on these subjects will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). Additional information on PGI is available at *http://www.acq.osd.mil/dpap/dars/pgi.*

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule updates, streamlines, and clarifies DFARS requirements, but makes no significant change to DoD contracting policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D079.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 217 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR Parts 217 and 252 as follows:

1. The authority citation for 48 CFR Parts 217 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 217—SPECIAL CONTRACTING METHODS

2. Section 217.202 is revised to read as follows:

217.202 Use of options.

See PGI 217.202 for guidance on the use of options.

217.208 [Amended]

3. Section 217.208 is amended in the first sentence by revising the parenthetical to read ''(10 U.S.C. 2305(a)(5))''.

4. Section 217.208–70 is amended by revising paragraph (b) introductory text and paragraph (b)(1) to read as follows:

217.208–70 Additional clauses.

* * * * *

(b) When a surge option is needed in support of industrial capability production planning, use the clause at 252.217–7001, Surge Option, in solicitations and contracts.

(1) Insert the percentage of increase the option represents in paragraph (a) of the clause to ensure adequate quantities are available to meet item requirements.

* * * * *

217.503 [Removed]

5. Section 217.503 is removed.

6. Sections 217.7103 and 217.7103–1 are revised to read as follows:

217.7103 Master agreements and job orders.

217.7103–1 Content and format of master agreements.

Follow the procedures at PGI 217.7103–1 for preparation of master agreements.

7. Section 217.7103–3 is amended by revising paragraph (b) and removing paragraphs (c) through (f). The revised text reads as follows:

217.7103–3 Solicitations for job orders.

* * * * *

(b) Follow the procedures at PGI 217.7103–3 when preparing solicitations for job orders.

217.7103–4 [Removed]

8. Section 217.7103–4 is removed.

217.7103–5 through 217.7103–7 [Redesignated]

9. Sections 217.7103–5 through 217.7103–7 are redesignated as sections 217.7103–4 through 217.7103–6, respectively.

10. Newly designated section 217.7103–4 is amended by revising paragraph (b) and removing paragraph (c). The revised text reads as follows:

217.7103–4 Emergency work.

* * * * *

(b) Follow the procedures at PGI 217.7103–4 when processing this type of undefinitized contract action.

11. Newly designated section 217.7103–5 is revised to read as follows:

217.7103–5 Repair costs not readily ascertainable.

Follow the procedures at PGI 217.7103–5 if the nature of any repairs is such that their extent and probable cost cannot be ascertained readily.

Subpart 217.72 [Removed and Reserved]

12. Subpart 217.72 is removed and reserved.

13. Section 217.7404–5 is amended by revising paragraphs (b)(1) and (2) to read as follows:

217.7404–5 Exceptions.

* * * * *

(b) * * *

(1) A contingency operation; or

(2) A humanitarian or peacekeeping operation.

217.7404–6 [Amended]

14. Section 217.7404–6 is amended in the introductory text by removing ''agency'' and adding in its place ''contracting activity''.

217.7405 [Removed]

15. Section 217.7405 is removed.

217.7406 [Redesignated]

16. Section 217.7406 is redesignated as section 217.7405.

17. Section 217.7500 is amended by removing the parenthetical ''(as defined in appendix E)''.

217.7501 through 217.7504 [Redesignated]

18. Sections 217.7501 through 217.7504 are redesignated as sections 217.7502 through 217.7505, respectively.

19. A new section 217.7501 is added to read as follows:

217.7501 Definition.

Replenishment parts, as used in this subpart, means repairable or consumable parts acquired after the initial provisioning process.

217.7502 [Amended]

20. Newly designated section 217.7502 is amended as follows:

a. In paragraph (b)(1) by removing ''217.7503'' and adding in its place ''PGI 217.7504''; and

b. In paragraph (c) by removing ''217.7504'' and adding in its place ''217.7505''.

21. Newly designated sections 217.7503 and 217.7504 are revised to read as follows:

217.7503 Spares acquisition integrated with production.

Follow the procedures at PGI 217.7503 for acquiring spare parts concurrently with the end item.

217.7504 Acquisition of parts when data is not available.

Follow the procedures at PGI 217.7504 when acquiring parts for which the Government does not have the necessary data.

22. Section 217.7506 is added to read as follows:

217.7506 Spare parts breakout program.

See PGI 217.7506 and DoD 4140.1–R, DoD Supply Chain Materiel Management Regulation, Chapter 8, Section C8.3, for spare parts breakout requirements.

217.7600 [Removed]

23. Section 217.7600 is removed.

24. Section 217.7601 is revised to read as follows:

217.7601 Provisioning.

(a) Follow the procedures at PGI 217.7601 for contracts with provisioning requirements.

(b) For technical requirements of provisioning, see DoD 4140.1–R, DoD Supply Chain Materiel Management Regulation, Chapter 2, Section C2.2.

217.7602 through 217.7603–3 [Removed]

25. Sections 217.7602 through 217.7603–3 are removed.

217.7700 [Removed]

26. Section 217.7700 is removed.

27. Section 217.7701 is revised to read as follows:

217.7701 Procedures.

Follow the procedures at PGI 217.7701 when acquiring over and above work.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.217–7004 [Amended]

28. Section 252.217–7004 is amended as follows:

a. By revising the clause date to read ''(XXX 2005)''; and

b. In paragraph (a), in the first sentence, by removing ''in accordance with FAR part 14 or 15, as applicable''.

252.217–7017 through 252.217–7025 [Removed and Reserved]

29. Sections 252.217–7017 through 252.217–7025 are removed and reserved.

252.217–7027 [Amended]

30. Section 252.217–7027 is amended in the introductory text by removing ''217.7406'' and adding in its place 217.7405''.

Appendix E to Chapter 2 [Removed and Reserved]

31. Appendix E to Chapter 2 is removed and reserved.

[FR Doc. 05–18472 Filed 9–15–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 239

[DFARS Case 2003–D094]

Defense Federal Acquisition Regulation Supplement; Exchange or Sale of Government-Owned Information Technology

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to delete obsolete procedures for the exchange or sale of Government-owned information technology. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before November 15, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003–D094, using any of the following methods:

○ Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

○ Defense Acquisition Regulations Web site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. Follow the instructions for submitting comments.

○ E-mail: *dfars@osd.mil*. Include DFARS Case 2003–D094 in the subject line of the message.

○ Fax: (703) 602–0350.

○ Mail: Defense Acquisition Regulations Council, Attn: Ms. Gabrielle Ward, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

○ Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Gabrielle Ward, (703) 602–2022.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will

contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm.*

This proposed rule is a result of the DFARS Transformation initiative. The rule revises DFARS Subpart 239.70 to delete obsolete procedures for the exchange or sale of Government-owned information technology. DoD now handles the exchange or sale of information technology equipment in the same manner as other personal property, in accordance with DoD 4140.1–R, DoD Supply Chain Materiel Management Regulation. The proposed rule adds a reference to DoD 4140.1–R.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed DFARS change is limited to the deletion of obsolete procedures for the exchange or sale of Government-owned information technology. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D094.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 239

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR Part 239 as follows:

1. The authority citation for 48 CFR Part 239 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

2. Subpart 239.70 is revised to read as follows:

Subpart 239.70—Exchange or Sale of Information Technology

Sec.
239.7001 Policy.

239.7001 Policy.

Agencies shall follow the procedures in DoD 4140.1–R, DoD Supply Chain Materiel Management Regulation, Chapter 9, Section C9.5, when considering the exchange or sale of Government-owned information technology.

[FR Doc. 05–18471 Filed 9–15–05; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 239 and 252

[DFARS Case 2003–D068]

Defense Federal Acquisition Regulation Supplement; Acquisition of Information Technology

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text on the acquisition of information technology. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before November 15, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003–D068, using any of the following methods:

○ Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

○ Defense Acquisition Regulations Web Site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* Follow the instructions for submitting comments.

○ E-mail: *dfars@osd.mil.* Include DFARS Case 2003–D068 in the subject line of the message.

○ Fax: (703) 602–0350.

○ Mail: Defense Acquisition Regulations Council, Attn: Ms. Gabrielle Ward, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

○ Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Gabrielle Ward, (703) 602–2022.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm.*

This proposed rule is a result of the DFARS Transformation initiative. The proposed DFARS changes—

○ Remove text that is obsolete or unnecessary;

○ Clarify text addressing charges for special construction or assembly related to telecommunications services;

○ Clarify the text of clauses used in basic agreements for telecommunications services; and

○ Remove text addressing the acquisition of telecommunications services from foreign carriers. Text on this subject will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). Additional information on PGI is available at *http://www.acq.osd.mil/dpap/dars/pgi.*

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*,

because the rule updates and clarifies DFARS text, but makes no significant change to DoD policy for the acquisition of information technology. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D068.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 239

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR part 239 as follows:

1. The authority citation for 48 CFR part 239 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

239.7200 [Removed]

2. Section 239.7200 is removed.

3. Section 239.7201 is added to read as follows:

239.7201 Solicitation requirements.

Contracting officers shall ensure that all applicable Federal Information Processing Standards are incorporated into solicitations.

239.7202 [Removed]

4. Section 239.7202 is removed.

5. Section 239.7400 is amended by revising the second sentence to read as follows:

239.7400 Scope.

* * * Telecommunications services meet the definition of information technology.

6. Section 239.7402 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

239.7402 Policy.

(a) *Acquisition.* DoD policy is to acquire telecommunications services from common and noncommon telecommunications carriers—

(1) On a competitive basis, except when acquisition using other than full and open competition is justified;

(2) Recognizing the regulations, practices, and decisions of the Federal Communications Commission (FCC) and other governmental regulatory bodies on rates, cost principles, and accounting practices; and

(3) Making provision in telecommunications services contracts for adoption of—

(i) FCC approved practices; or

(ii) The generally accepted practices of the industry on those issues concerning common carrier services where—

(A) The governmental regulatory body has not expressed itself;

(B) The governmental regulatory body has declined jurisdiction; or

(C) There is no governmental regulatory body to decide.

* * * * *

(c) *Foreign carriers.* For information on contracting with foreign carriers, see PGI 239.7402(c).

239.7403 and 239.7404 [Removed and Reserved]

7. Sections 239.7403 and 239.7404 are removed and reserved.

8. Section 239.7406 is amended by revising paragraph (c) to read as follows:

239.7406 Cost or pricing data and information other than cost or pricing data.

* * * * *

(c) Contracting officers shall obtain sufficient information to determine that the prices are reasonable in accordance with FAR 15.403–3 or 15.403–4.

9. Section 239.7408–1 is amended in paragraph (e) by revising the last sentence to read as follows:

239.7408–1 General.

* * * * *

(e) * * * The contracting officer must approve special construction charges before final payment.

10. Section 239.7408–2 is amended by revising paragraph (a) to read as follows:

239.7408–2 Applicability of construction labor standards for special construction.

(a) The construction labor standards in FAR Subpart 22.4 ordinarily do not apply to special construction. However, if the special construction includes construction, alteration, or repair (as defined in FAR 22.401) of a public building or public work, the construction labor standards may apply. Determine applicability under FAR 22.402.

* * * * *

11. Section 239.7409 is amended in paragraph (b) by revising the second sentence to read as follows:

239.7409 Special assembly.

* * * * *

(b) * * * The contracting officer should negotiate special assembly rates and charges before starting service.

* * *

12. Section 239.7411 is amended by revising paragraph (d) to read as follows:

239.7411 Contract clauses.

* * * * *

(d) Use the clause at 252.239–7016, Telecommunications Security Equipment, Devices, Techniques, and Services, in solicitations and contracts when performance of a contract requires secure telecommunications.

Subpart 239.75 [Removed]

13. Subpart 239.75 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. Section 252.239–7013 is revised to read as follows:

252.239–7013 Obligation of the Government.

As prescribed in 239.7411(c), use the following clause:

OBLIGATION OF THE GOVERNMENT (XXX 2005)

(a) This basic agreement is not a contract. The Government incurs no monetary liability under this agreement.

(b) The Government incurs liability only upon issuance of a communications service authorization, which is the contract and incorporates the terms of this agreement.

(End of clause)

15. Section 252.239–7015 is revised to read as follows:

252.239–7015 Continuation of Communication Service Authorizations.

As prescribed in 239.7411(c), use the following clause:

CONTINUATION OF COMMUNICATION SERVICE AUTHORIZATIONS (XXX 2005)

(a) All communication service authorizations issued by _____ incorporating Basic Agreement Number ____, dated _____, are modified to incorporate this basic agreement.

(b) Communication service authorizations currently in effect which were issued by the activity in paragraph (a) of this clause incorporating other agreements with the Contractor may also be modified to incorporate this agreement.

(c) This basic agreement is not a contract.

(End of clause)

[FR Doc. 05–18474 Filed 9–15–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Chapter I

RIN 1018–AJ24

Humane and Healthful Transport of Wild Mammals and Birds to the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: We are proposing to update and amend the standards for the humane and healthful transport of wild mammals and birds to the United States. To determine how to proceed, we are asking the public for comments and input on whether the current regulations are up to date and adequate. We are also seeking comments for the best process to address necessary changes to the requirements in the Code of Federal Regulations that provide standards for the humane and healthful transport of wild mammals and birds to the United States. This will allow us to further meet our responsibilities under the Lacey Act Amendments of 1981 and our obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The current standards for transport of mammals and birds now available are in accordance with the accepted international requirements as described in the International Air Transport Association's (IATA) Live Animal Regulations (LAR) published in October 1993 (20th edition). This edition is now 12 years old and several updates of the IATA Live Animal Regulations have been published since publication of that edition. Many mammals and birds are protected by CITES and it is a recommendation that all species listed under CITES be transported using the current IATA LAR. We expect that if we promulgate amendments to the standards for humane and healthful transport of wild mammals and birds to the United States, these amendments will be consistent with the most current IATA LAR at the time of the final rule, and, therefore, be current with the industry standards for ensuring the humane and healthful shipment of live mammals and birds. Finally, it has come to our attention that IATA LAR requirements may not always agree with those of the international ground transport industry, such as those of the Animal Transport Association (AATA). We are interested in public comments on this issue as well.

DATES: We will consider comments and information received by December 15, 2005 in developing a proposed rule.

ADDRESSES: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the above address or fax comments to 703–358–2298. You may also send comments via electronic mail to *HUMANETRANSPORT@FWS.GOV*. If you submit comments via e-mail, please be aware that we have been subject to periodic internet and e-mail shutdowns. If you chose to e-mail your comments, please check our Web site at *www.fws.gov* first. If the website is not functional, any e-mail you send may not reach us and you will need to fax or mail your comments to us. Finally, you may hand-deliver comments to the above address.

FOR FURTHER INFORMATION CONTACT: Andrea Gaski, Chief, Branch of Operations, Division of Management Authority, U.S. Fish and Wildlife Service; telephone (703) 358–2095, fax (703) 358–2298.

SUPPLEMENTARY INFORMATION: Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please include ''Attn: [RIN number, 1018–AJ24]'' and your name and U.S. post office return mailing address in your Internet message and correspondence and categorize yourself as follows:

1. International organization;
2. Government;
3. Non-government conservation organization;
4. Humane or animal welfare organization;
5. Wildlife/pet business;
6. Other business;
7. Private citizen.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be limited circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this clearly at the beginning of your comments, but we will not consider anonymous comments. We generally make all submissions from organizations or businesses, or from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

We believe that there are several reasons why the current regulations that set standards for the humane and healthful transportation for wild mammals and birds to the United States should be amended.

First, the current regulations provide specific guidelines to the shipping community on proper packing and transport techniques and requirements. These regulations allow us to determine when shippers are not transporting animals under humane or healthful conditions. While the current regulations provide some detail on shipping certain types of mammals, as well as general shipping guidelines, greater detail is required to address the specific needs of individual species. Amending and improving our current standards, which are based on the 1993 IATA LAR, will specify greater detail on proper packing and transport techniques and requirements, and will help us to continue to ensure that these animals are transported in a humane and healthful manner. Furthermore, the current regulations describe only general requirements regarding the shipment of birds, while the 31st edition of the IATA LAR is more specific for particular bird and mammal species.

Second, the regulations need to be updated to make them consistent with the most recent edition of the IATA LAR. Many mammals and birds are protected under CITES. It is a requirement of CITES that all listed species must be packed and transported according to the IATA LAR guidelines. This includes all imports for all CITES-listed species. Humane transport of CITES-listed species is required by the text of CITES and explained in greater detail in Resolution Conf 10.21 (Transport of Live Animals), which was adopted by the CITES Parties at the Tenth Conference of the Parties (COP), in Harare, Zimbabwe, June, 1997. But although IATA LAR are cited and referred to in the current regulations, their reference is to the 20th edition of the IATA LAR. In the past 12 years new methods and materials have been developed to improve transportation of animals, and to reduce shipping mortality and simplify processes. The IATA LAR is updated every year, and CITES recommends that shippers and carriers follow the requirements in the current edition of the IATA LAR. We will likely base any proposed amended

regulations on the 32nd or 33rd edition of the IATA LAR.

Third, IATA lists and names species differently from the way CITES lists and names species in the Appendices to the Convention. This may cause confusion and misunderstanding; IATA uses a combination of common English and scientific names, but CITES sometimes uses only the scientific name. If we amend current regulations, we will use both the common and scientific name of species whenever possible, although we intend to use just the common name when referring to groups of animals, such as ''bears'' or ''parrots.'' This practice will make amended regulations similar to the 31st edition of the IATA LAR. In addition, many shippers transport CITES-listed and non-CITES-listed species on the same flights, and the IATA LAR refers to both CITES-listed and non-CITES-listed species. Therefore, it is important to provide common names to assist those individuals who may not be familiar with scientific names, even though we recognize that common names can refer to different species of animals.

Fourth, although the IATA LAR provide guidelines for air transport and can be used as guidelines for non-air transport (*i.e.* transport by road, rail, or sea), there are recommendations available from other sources (*e.g.* AATA) that specifically address the transport of species by road, rail or sea. Additionally, the CITES Parties are considering the addition of requirements specific for ground transportation of wildlife and we plan to propose amendments to our regulations based on those recommendations to standardize international ground shipping practices. Therefore, we are soliciting recommendations from the public and other interested parties regarding ground transportation recommendations for various types of animal groups.

As a result, we plan to change the regulations in 50 CFR Part 14, subpart J, in several ways.

First, we plan to propose to include more specific requirements such as number of animals per container, for the general transport of mammals and birds. In shipments where these numbers have been exceeded, our wildlife inspectors would have an objective and consistent method to determine whether the shipment was humane and healthful. The current regulations do not provide any detail in this regard. Also, while the current regulations specify that terminal facilities must have an effective program for the control of insects, ectoparasites and pests of mammals and birds, we propose to include specific methods to be used by terminal facilities to control insect pests.

Second, we plan to propose changes to 50 CFR Part 14, subpart J, by adding new sections and expanding existing regulations that enact requirements concerned with the transport of particular taxa of mammals and birds. Since these regulations were last published in 1992, several changes have been made in the IATA LAR specifying different shipping arrangements for various species of mammals and birds. We plan to propose changes based upon the 32nd or 33rd edition of the IATA LAR for the transport of mammals and birds. In the IATA LAR 20th edition, for example, several small carnivores (genets, olingos, grison, and falanouc) are included in the crate requirements for large gnawing rodents and marsupials. In the IATA LAR 31st edition, these same species have been included in the container requirements for animals more similar in behavior and form.

Third, we plan to propose changing the language and format of the old regulations to clear and plain language with an easier to follow outline format.

Finally, in order to be current with CITES transportation recommendations, we propose to add regulations specifically pertaining to international ground transportation of wildlife to the United States. The CITES Transport Working Group (TWG) is developing such guidelines and we will likely propose international ground transportation regulations that largely mirror those adopted by the CITES Parties. We also seek input on the spectrum of potential ground transport issues, particularly species or taxa-specific ones, and will consider that input during our revisions.

Other changes to the regulations will be based on comments and suggestions that we receive from the public.

Author

The author of this advance notice of proposed rulemaking is the staff of the Division of Management Authority (see **FOR FURTHER INFORMATION CONTACT** section).

Authority: The authority for this advance notice of proposed rulemaking is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 19, 2005.

Marshall Jones,

Acting Director.

[FR Doc. 05–18416 Filed 9–13–05; 12:22 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI80

Endangered and Threatened Wildlife and Plants; Proposed Establishment of a Nonessential Experimental Population of Northern Aplomado Falcons in Southern New Mexico and Arizona

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period, notice of public hearings, and notice of availability of draft monitoring plan.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period for the proposed rule to establish, under section 10(j) of the Endangered Species Act of 1973, as amended (Act), an experimental population of northern aplomado falcons (*Falco femoralis septentrionalis*) into their historic habitat in southern New Mexico and Arizona. We are providing this notice to allow all interested parties to comment on the proposed reintroduction and the draft environmental assessment (notice of which published in the **Federal Register** on February 9, 2005). We are also announcing the availability of a draft monitoring plan for the reintroduction of the northern aplomado falcon for public comment. We will hold two public hearings (see **DATES** and **ADDRESSES** sections).

Through this notice and the public hearings, we are seeking comments or suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning the proposed experimental population and draft monitoring plan.

DATES: Comments must be submitted directly to the Service (see **ADDRESSES** section) on or before November 15, 2005, or at any of the public hearings to be held in October 2005. Any comments received after the closing date may not be considered in the final determination on the proposal.

We will hold two public hearings at the following dates and times:

1. October 11, 2005: Las Cruces, NM. Informal question and answer session: 6 p.m. Public hearing: 7 p.m.–8:45 p.m.

2. October 13, 2005: Albuquerque, NM. Informal question and answer session: 6 p.m. Public hearing: 7 p.m.–8:45 p.m.

ADDRESSES:

Meetings

The public hearings will be held at the following locations:

1. Las Cruces, NM: Auditorium, Corbett Center Student Union, Jordan Street and University Avenue, New Mexico State University, Las Cruces, New Mexico 88003–8001. (505) 646–4804. Parking is located in Lot 27 off of Triviz and University Avenue.

2. Albuquerque, NM: Silver & Turquoise Room, Indian Pueblo Cultural Center, 2401 12th Street NW (1 block North of I–40), Albuquerque, New Mexico 87104. (505) 843–7270 or 1–800–766–4405.

Written information, comments, or questions related to preparation of the draft environmental assessment and the National Environmental Policy Act (NEPA) process should be submitted to Susan MacMullin, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE, Albuquerque, New Mexico 87113. Written comments may also be sent by facsimile to (505) 346–2542 or by e-mail to *R2FWE_AL@fws.gov.* For directions on how to submit electronic filing of comments, see the ''Public Comments Solicited'' section.

You may obtain copies of the proposed rule, draft environmental assessment, and draft monitoring plan from the above address, or by calling 505–346–2525. They are also available from our Web site at *http://ifw2es.fws.gov/NewMexico/.* All comments and materials received, as well as supporting documentation used in preparation of the proposed rule, will be available for public inspection, by appointment, during normal business hours at the New Mexico Ecological Services Field Office.

FOR FURTHER INFORMATION CONTACT: Questions regarding the development of the proposed rule designating an experimental population, the draft environmental assessment, or the draft monitoring plan may be directed to Susan MacMullin, Field Supervisor, New Mexico Ecological Services Field Office, telephone 505–346–2525 (see **ADDRESSES**). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

We previously proposed to reintroduce northern aplomado falcons into their historic habitat in southern New Mexico with the purpose of establishing a viable resident population (February 9, 2005, 70 FR 6819). If the proposed rule is finalized, we may release up to 150 captive-raised northern aplomado falcons annually in the summer and/or fall for 10 or more years, until a self-sustaining population is established. We propose to designate this reintroduced population as a nonessential experimental population, according to section 10(j) of the Endangered Species Act of 1973, as amended. The geographic boundary of the proposed nonessential experimental population includes all of New Mexico and Arizona. A draft environmental assessment was prepared for this proposed action and has been made available for comment (February 9, 2005, 70 FR 6819).

Pursuant to 50 CFR 424.16(c)(2), we may extend or reopen a comment period upon finding that there is good cause to do so. Our public hearing for this proposed rule was originally scheduled for Las Cruces, New Mexico, on March 15, 2005. However, this hearing had to be postponed because of widespread road closures on that date in northern and central New Mexico due to hazardous snow and ice conditions. In addition, we have now developed the draft monitoring plan for the proposed reintroduction of the northern aplomado falcon that was referred to in the proposed rule and draft environmental assessment (70 FR 6819). We announce the availability of this document and solicit data and comments from the public (please see **ADDRESSES** section). We also announce new public hearing dates concurrently with the availability of the draft monitoring plan. We deem these considerations as sufficient cause to reopen the comment period that closed on April 11, 2005 (70 FR 6819). For additional information on how to send comments, see ''Public Comments Solicited'' section.

Our proposal to reintroduce northern aplomado falcons in New Mexico and Arizona under section 10(j) of the Endangered Species Act requires the Service to periodically review and evaluate the reintroduction program. The monitoring plan will assist the Service in its evaluation of the release program described in the proposed rule and draft environmental assessment and will provide guidelines for northern aplomado falcon monitoring efforts in New Mexico and Arizona. Monitoring requirements and studies are described in two tiers. Tier 1 describes short-term monitoring, which includes basic monitoring requirements for newly released falcons and for nesting falcons beginning 3 years after their reintroduction. Tier 1 monitoring will primarily be the responsibility of The Peregrine Fund, who will submit annual reports to the Service on northern aplomado falcon release monitoring results in New Mexico and Arizona. In addition, the Bureau of Land Management and U.S. Army Fort Bliss will be responsible for remote-sensing habitat monitoring relevant to the reintroduction program in New Mexico and Arizona. Tier 2 investigations include nonmandatory monitoring efforts subject to available funding. Annual stakeholder meetings will be conducted to review project data to determine if refinements to the program are needed. We will use the best scientific and commercial data available, including, but not limited to, results from this monitoring plan and stakeholder meetings to prepare 5-year evaluations of the New Mexico and Arizona falcon restoration program.

Public Hearings

The Act provides for one or more public hearings on this proposed rule, if requested. We have been requested to conduct two public hearings in New Mexico. We will hold a public hearing in Las Cruces, New Mexico, on October 11, 2005, and one in Albuquerque, New Mexico, on October 13, 2005. Announcements for the public hearings will also be made in local newspapers.

Public hearings are designed to gather relevant information that the public may have that we should consider in our rulemaking. During the hearings, we will present information about the proposed action. We invite the public to submit information and comments at the hearings or in writing during the open public comment period. We encourage persons wishing to comment at the hearing to provide a written copy of their statement at the start of the hearing. This notice and the public hearings will allow all interested parties to submit comments on the proposed nonessential experimental population rule for the northern aplomado falcon. We are seeking comments from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning the proposal. Persons may send written comments to the New Mexico Ecological Services Field Office (see **ADDRESSES** section) at any time during the open comment period. We will give equal consideration to oral and written comments. For more information about commenting, see the ''Public Comments Solicited'' section.

Public Comments Solicited

We intend for our draft environmental assessment (EA) to consider reasonable

alternatives for the establishment of an experimental population of the aplomado falcon. We also wish to ensure than any proposed rulemaking to establish an experimental population and the accompanying monitoring plan effectively evaluate all potential issues and impacts associated with this action. Therefore, we seek comment from Federal, State, local, or Tribal government agencies; the scientific or business community; landowners; or any other interested party. Comments should be as specific as possible.

In order to issue a final rule to implement this proposed action and to determine whether to prepare a finding of no significant impact or an environmental impact statement, we will take into consideration all comments and any additional information we receive. Such communications may lead to a final rule that differs from this proposal. All comments, including names and addresses, will become part of the supporting record.

If you wish to provide comments and/or information, you may submit your comments and materials by any one of several methods (see **ADDRESSES**). Comments submitted electronically should be in the body of the e-mail message itself or attached as a text file (ASCII), and should not use special characters or encryption. Please also include ''Attn: Falcon Proposed 10(j) Rule,'' your full name, and your return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home addresses, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at New Mexico Ecological Services Office in Albuquerque, New Mexico (see **ADDRESSES**).

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) require that Federal agencies obtain approval from OMB before collecting information from the public. A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB approval is required if information will be collected from 10 or more persons (5 CFR 1320.3). ''Ten or more persons'' refers to the persons to whom a collection of information is addressed by the agency within any 12-month period, and to any independent entities to which the initial addressee may reasonably be expected to transmit the collection of information during that period, including independent State, territorial, Tribal or local entities and separately incorporated subsidiaries or affiliates. For the purposes of this definition, ''persons'' does not include employees of the respondent acting within the scope of their employment, contractors engaged by a respondent for the purpose of complying with the collection of information, or current employees of the Federal government when acting within the scope of their employment, but it does include former Federal employees. The draft monitoring plan for reestablishment of the falcon contains a requirement for information collection; however, it does not affect 10 or more persons. Therefore, OMB approval and a control number are not needed for the data collection forms appended to the monitoring plan. In the future, if it becomes necessary to collect this information from 10 or more respondents per year, we will first obtain approval from OMB.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: September 1, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–18386 Filed 9–15–05; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 70, No. 179
Friday, September 16, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before November 15, 2005.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

SUPPLEMENTARY INFORMATION:

OMB No: OMB 0412–0514.

Form No.: N/A.

Title: USAID Regulation 1—Rules and Procedures Applicable to Commodity Transactions Financed by USAID (22 CFR part 201).

Type of Review: Renewal of Information Collection.

Purpose: The U.S. Agency for International Development (USAID) finances transactions under Commodity Import Programs and needs to assure that the transaction complies with applicable statutory and regulatory requirements. In order to assure compliance and request refund when appropriate, information is required from host country importers, suppliers receiving USAID funds, and banks making payments for USAID.

Annual Reporting Burden:

Respondents: 335.

Total annual responses: 2,643.

Total annual hours requested: 1,042.

Dated: September 8, 2005.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services Bureau for Management.

[FR Doc. 05–18387 Filed 9–15–05; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 12, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Consumer Complaint Monitoring System—Food Safety Mobile Questionnaire.

OMB Control Number: 0583–NEW.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and the Egg Product Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. FSIS tracks consumer complaints about meat, poultry, and egg products. FSIS is developing a web portal to capture consumer complaint information. FSIS will also be using a Food Safety Mobile that travels around the continental United States promoting food safety with respect to meat, poultry, and egg products.

Need and Use of the Information: FSIS will use the information collected from the web portal and a questionnaire to look for trends that will enhance the Agency's food safety efforts. FSIS will also collect information that will assist them in planning and scheduling visits of the Food Safety Mobile.

Description of Respondents: Individuals or households; Not-for-profit institutions

Number of Respondents: 650.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 139.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–18377 Filed 9–15–05; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. ST–05–07]

Plant Variety Protection Board; Open Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Plant Variety Protection Board.

DATES: October 6, 2005, 8:30 a.m. to 5 p.m., open to the public.

ADDRESSES: The meeting will be held in the United States Department of Agriculture National Agricultural Library, 10301 Baltimore Blvd, Beltsville, Maryland.

FOR FURTHER INFORMATION CONTACT: Mrs. Janice M. Strachan, Plant Variety Protection Office, Science and Technology Program, United States Department of Agriculture, 10301 Baltimore Blvd., Room 401, National Agricultural Library Building, Beltsville, MD 20705–2351, Telephone number (301) 504–5518, fax (301) 504–5291, or e-mail *PVPOmail@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 10(a) of the Federal Advisory Committee Act, this notice is given regarding a Plant Variety Protection (PVP) Advisory Board meeting. The board is constituted under section 7 of the PVP Act (7 U.S.C. 2327). The proposed agenda for the meeting will include discussions of: (1) The accomplishments of the PVP Office, (2) the financial status of the PVP Office, (3) E-business update, (4) Use of molecular data as a tool to determine distinctness, uniformity and stability, role of the AMS National Science Laboratory, and accreditation procedures, and (5) other related topics. Upon entering the National Agricultural Library Building, visitors should inform security personnel that they are attending the PVP Advisory Board Meeting. Identification will be required to be admitted to the building. Security personnel will direct visitors to the registration table located outside of Room 1400. Registration upon arrival is necessary for all participants.

If you require accommodations, such as sign language interpreter, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.** Minutes of the meeting will be available for public review 30 days following the meeting at the address listed under **FOR FURTHER INFORMATION CONTACT.** The minutes will also be posted on the Internet Web site *http://www.ams.usda.gov/science/PVPO/PVPindex.htm.*

The agenda for the upcoming meeting will be as follows:

Plant Variety Protection (PVP) 2005 Advisory Board Meeting
Agenda, October 6, 2005
8:30 a.m. to 5 p.m.
Call to Order
Introductions
Opening Remarks
Adoption of Agenda
Adoption of May 2004 Board Meeting Minutes
Appeals to the Secretary of Agriculture
Overview of the PVP Office and PVP Act
PVP Office Accomplishment Report
PVP Office Financial Update
PVP Office E-business Update
Use of Molecular Data in Determinations of Distinctness, Uniformity, and Stability,
Roles of the AMS National Science Laboratory, and Accreditation Procedures
Topics brought forward by Board members
Future Program Activities
Meeting Summary
Adjourn

Dated: September 12, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–18378 Filed 9–15–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the Agricultural Research Service's (ARS) intention to request an extension of a currently approved information collection, Information Collection For Document Delivery Services at the National Agricultural Library (NAL), that expires February 28, 2006.

DATES: Comments must be submitted on or before November 21, 2005.

ADDRESSES: Address all comments to Wayne Thompson, Access Services Librarian, Collection Services Branch, National Agricultural Library, Agricultural Research Service, Room 300, 10301 Baltimore Ave., Beltsville, MD 20705–2351. Telephone: 301–504–6503. Fax: 301–504–7593. E-mail: *access@nal.usda.gov*

SUPPLEMENTARY INFORMATION:

Title: Information Collection For Document Delivery Services.

OMB Number: 0518–0027.

Expiration Date of Approval: February 28, 2006.

Type of Request: To extend a currently approved information collection.

Abstract: In its role as both a preeminent agricultural research library and a National Library of the United States, NAL (part of the Department of Agriculture's Agricultural Research Service) provides loans and photocopies of materials from its collections to libraries and other institutions and organizations. NAL follows applicable copyright laws and guidelines and standard interlibrary codes and practices when providing loans and photocopies and charges a fee, if applicable, for this service. To request a loan or photocopy, institutions must provide a written request to NAL using either NAL's Web-based online request system or an interlibrary loan request system such as the Online Computer Library Center (OCLC) or the National Library of Medicine's Docline. Information provided in these requests include the name, address, and telephone number of the party requesting the material, and depending on the method of delivery of the material to the party, may include either a fax number, e-mail address, or Ariel IP address. The requestor must also provide a statement acknowledging copyright compliance, bibliographic information for the material they are requesting, and the maximum dollar amount they are willing to pay for the material. The collected information is used to deliver the material to the requesting party, bill for and track payment of applicable fees, monitor the return to NAL of loaned material, identify and locate the requested material in NAL collections, and

determine whether the requesting party consents to the fees charged by NAL.

Estimate of Burden: Average 1.00 minute per response.

Description of Respondents: Respondents to the collection of information are those libraries, institutions, or organizations that request interlibrary loans or copies of material in the NAL collections. Each respondent must furnish the information for each loan or copying request.

Estimated Number of Respondents: 2100.

Frequency of Responses: Average 15 per respondent.

Estimated Total Annual Burden on Respondents: 525 hours.

Comments: Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have a practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques. Comments may be sent to Wayne Thompson at the address listed above within 65 days after date of publication. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 8, 2005.

Edward B. Knipling,

Administrator, ARS.

[FR Doc. 05–18380 Filed 9–15–05; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comment; National Forest Visitor Use Monitoring

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with revision of information collection, National Forest Visitor Use Monitoring.

DATES: Comments must be received in writing on or before November 15, 2005 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Dr. Donald B.K. English, NVUM Program Manager, USDA-Forest Service, 1400 Independence Ave SW., Washington, DC 20250.

Comments also may be submitted via facsimile to (202) 205–1145 or by e-mail to: *denglish@fs.fed.us.*

The public may inspect comments received at Room 4 Central, Yates Building, USDA-Forest Service, Recreation and Heritage Resources staff, 1400 Independence Ave. SW., Washington, DC during normal business hours. Visitors are encouraged to call ahead to (202) 205–9595 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Dr. Donald B.K. English, Recreation and Heritage Resources staff, at (202) 205–9595. Individuals who use telecommunication devices for the deaf may call the Federal Relay Service at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Background

The Government Performance and Results Act of 1993 requires that Federal agencies establish measurable goals and monitor their success at meeting those goals. Two items the Forest Service must measure are: (1) The number of visits that occur on the National forest lands for recreation and other purposes, and (2) the views and satisfaction level of recreational visitors to National Forest System lands about the types and quality of recreation services the agency provides. The agency is often asked for this kind of information from a variety of organizations that include Congressional Staffs, newspapers, magazines, and recreational trade organizations.

National Forest System land managers will use the collected information to better understand their recreational customers, to improve recreational opportunities and services, and to identify barriers that prevent the agency from meeting the recreational needs of its customers. Data and results from this information collection are key considerations in revising land and resource management plans for National Forests, as required by the National Forest Management Act of 1976, and in agency strategic planning efforts. In addition, information and results from this collection are directly used in several of the OMB Program Analysis Reporting Tool (PART) measures for the Forest Service Recreation program. Examples include measures of customer satisfaction, participation in physically active outdoor activities, and estimates of recreation visitation.

The currently approved information collection is designed to estimate the number of visits to National Forests and Grasslands for recreation as well as obtain information on key management issues including the proportion of visitors that engage in various outdoor recreation activities, the geographic and demographic populations served, visitor satisfaction with facilities and services provided, the amount of recreational use that occurs on designated wilderness areas, and salient economic aspects of recreational use of National Forests. The collected information will be shared with all National Forest System land managers and upon request, with others. Results from this collection will be published in agency reports and various research journals.

The sampling design, survey instrument, and analysis protocols are also being tested at several areas by the Department of the Interior (DOI), Bureau of Land Management to evaluate the applicability of this collection as a scientifically-credible and effective means of obtaining visitation estimates and visitor characteristics on its lands. As well, the DOI National Park Service and Fish and Wildlife Service will be testing the protocols on their lands in Southern Nevada to obtain information needed to conform with the Southern Nevada Public Land Management Act.

Title: National Visitor Use Monitoring.

OMB Number: 0596–0110.

Expiration Date of Approval: April 30, 2006.

Type of Request: Extension with revision.

Abstract: Data from this information collection is used to estimate the number of recreational visits to National Forests and Grasslands, and designated wilderness areas, as well as the types of activities in which these visitors participate. The data are used to identify recreational markets, defined customers served, evaluate visitor satisfaction, and estimate the economic values and impacts of recreational visits. Respondents are asked questions about the activities in which they participate while visiting National Forest System lands, the duration of their visit, how often they visit, what types of items they have purchased during their visit, and

their satisfaction with various aspects of the locations they visited.

Forest Service or contractor personnel will interview visitors as they exit National Forest System lands at a stratified random sample of recreational sites and forest access points. Surveys will be conducted on about one-fifth of the National Forests each year, so that complete coverage of agency lands occurs over a five-year cycle. Results of this study will be published in agency reports and various research journals. Data gathered in this collection is not available from other sources.

Estimate of Annual Burden: 10 minutes.

Type of Respondents: People who visit National Forest System lands.

Estimated Annual Number of Respondents: 66,000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 11,000 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: September 2, 2005.

Frederick R. Norbury,

Associate Deputy Chief, National Forest System.

[FR Doc. 05–18385 Filed 9–15–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas National Forest, Feather River Ranger District, California, Slapjack Project

AGENCY: Forest Service, USDA.

ACTION: Notice to intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement to disclose the environmental effects from construction of defensible fuel profile zones (DFPZs); harvest and reforestation of timber stands; watersted rehabilitation; control of noxious weeds; construction of temporary roads and reconstruction of specified roads; decommissioning of roads; road access restrictions, and underburning forest fuels and debris in the Slapjack project area.

DATES: Comments concerning the scope of the analysis must be received within 30 days of the publication of this notice in the **Federal Register**. The draft environmental impact statement is expected by January 2006, and the final environmental impact statement is expected by April 2006.

ADDRESSES: Send written comments concerning this notice to James M. Peña, Forest Supervisor, Plumas National Forest, P.O. Box 11500, 159 Lawrence Street, Quincy, CA 95971. Comments may be (1) mailed to the Responsible Official; (2) hand-delivered between the hours of 8 a.m.–4:30 p.m., Monday through Friday, excluding holidays; (3) faxed to (530) 283–7746; or (4) electronically mailed to: *comments-pacificsouthwestplumas@fs.fed.us.* Comments submitted electronically must be in Rich Text Format (.rtf).

FOR FURTHER INFORMATION CONTACT: Susan Joyce, Project Leader, Feather River Ranger District, 875 Mitchell Avenue, Oroville, CA 95965, or call (530) 534–6500.

SUPPLEMENTARY INFORMATION:

Project Location

The Slapjack project area is located approximately 19 air miles east of Oroville, California, near the communities of Challenge, Brownsville, Dobbins, Forbestown, Feather Falls, Woodleaf, Clipper Mills, and Strawberry Valley. The project area consists of approximately 27,000 acres of public and private land and is located within Butte, Yuba, and Plumas Counties, California. It is generally situated between Lake Oroville to Dobbins to the west, the North Yuba River to Wambo Bar on the East, and from Barton Hill to the town of Feather Falls to the North. The area ranges in elevation from approximately 1,300 to 3,800 feet above mean sea level.

The legal description of the project area is: Township (T) 20N, Range (R) 6E, portions of Sections 15, 23, 25, 26, and 34; T20N, R8E, portions of Section 32; T19N, R6E, portions of Sections 2–5, 9, 11 and 14; T19N, R7E, portions of Sections 1, 8, 11–13, 16–21 and 27–34; T19N, R8E, portions of Sections 4, 5, and 6; T18N, R7E, portions of Sections 2, 3, 12, 14, 22, 23, 26, and 34, Mount Diablo Base and Meridian.

Proposed Action

The Forest Service proposes to construct approximately 18 miles of DFPZs with a total treatment area of approximately 4,800 acres. A DFPZ is a strategically located strip of land approximately ¼ mile in width on which fuels, both living and dead, have been modified in order to reduce the potential for sustained crown fire and to allow fire suppression personnel a safer location from which to take action against a wildfire. Proposed DFPZs are located primarily on ridges. Due to dense brush in the area, use of herbicides is proposed to maintain the effectiveness of the DFPZs. Use of mechanical ground based equipment is proposed on 1,099 acres in DFPZs for masticating woody shrubs and trees under 10 inches in diameter at breast height. The healthiest, largest, and tallest conifers would be left at a spacing of 18 to 25 feet, depending on size of the remaining trees. Mastication would break up fuel continuity in these stands.

The Forest Service also proposes to harvest approximately 12 million board feet of timber through application of group selection and individual tree selection harvest methods. Group selection timber harvest would be conducted on approximately 240 acres within and near the DFPZ treatment units. Group selection involves harvest of trees up to 30-inches in diameter from small (½ to 2 acres) groups. The 240 acres would be harvested from a total area of about 2,291 acres. Over time, this would create an uneven-aged (all-aged) forests made up of a patchwork of small groups of same-aged trees. Individual tree selection harvest would be conducted on 148 acres to improve forest health and favor fire resilient tree species.

Use of existing and temporary roads would be needed to access timber and DFPZ treatment areas. An estimated 26 miles of existing road would be reconstructed with 2 additional miles of road resurfacing. An additional 26 miles of road, no longer in use or needed, would be decommissioned or closed by various methods, such as removal of culverts, ripping and seeding, recountouring, and installing barriers.

Use of herbicides to control the spread of noxious weeds is proposed on 10 to 15 acres. Aquatic and riparian

restoration projects include removal of five fish barriers, 1,000 feet of stream bank stabilization, and 15 acres of meadow restoration.

Underburning is proposed on 841 acres. An underburn is a prescribed burn under an existing canopy of trees designed to reduce excessive live and dead vegetation. Firelines would be constructed and burning would be initiated based on prescribed burn plans and on ''burn days'' designated by the State Air Quality Control Board.

Purpose and Need

The purposes of the project are: (1) To reduce the wildfire threat to communities located in the wildland-urban interface by creating a strategic Defensible Fuel Profile Zone (DFPZ) that provides fire suppression personnel control points for fireline construction and access; (2) to create all-aged, multi-story, fire resilient forest stands; promote ecological health; and increase the number of seedling and sapling-sized stands to better match estimated pre-European settlement conditions for the various seral (successional) stages. Fire resilient species include ponderosa pine, Douglas-fir, black oak, and sugar pine; (3) to contribute to the economic stability of rural communities by providing an adequate timber supply; (4) to implement restoration projects to promote healthy aquatic and riparian ecosystems; and (5) To control the spread of non-native, invasive plants within forest communities in order to maintain native plant diversity, natural communities, and maintain the effectiveness of DFPZs.

Preliminary Issues

The following preliminary issues have been identified for this proposal: Use of herbicides for control of noxious weeds and DFPZ maintenance, timber harvest within watersheds approaching or over the threshold of concern, and DFPZ construction costs. Additional issues may be identified during the scoping process.

Responsible Official

James M. Peña, Forest Supervisor, P.O. Box 11500, 159Lawrence Street, Quincy, CA 95971, is the Responsible Official.

Nature of Decision To Be Made

The Responsible Official will decide whether to implement this proposal, an alternative design that moves the area towards the desired condition, or not to implement any project at this time.

Scoping Process

Public questions and comments regarding this proposal are an integral part of this environmental analysis process. Comments will be used to identify issues and develop alternatives to the proposed action. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible.

Information about the proposed action will be mailed to adjacent landowners, as well as to those people and organizations that have indicated a specific interest in the project, to Native American entities, and federal, state and local agencies. The public will be notified of any meetings regarding this proposal by mailings and press releases sent to the local newspaper and media. There are no meetings planned at this time.

Public involvement was an integral part of the proposed action development as well. Forest Service personnel began working with local tribes, fire safe councils, Butte and Yuba County officials, State Congressional aides, South Feather Water and Power, the Quincy Library Group, and California Department of Forestry and Fire Protection in 2002–2003. The collaborators on the Slapjack Project, known collectively as the Eastern Butte/Yuba Border group (EBYB), worked to develop a series of fuel reduction treatments on National Forest System lands that extend and connect with fuel treatments on private lands, including those owned by industrial timber companies. In the years since collaboration began, Forest Service personnel have continued to meet with members of the Butte and Yuba Fire Safe Councils, local residents, and industrial timberland owners to refine the Slapjack project proposal.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. The public is encouraged to take part in the process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations that may be interested in, or affected by, the proposed vegetation management activities.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the fifty-five day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: September 2, 2005.

Robert G. MacWhorter,

Acting Forest Supervisor.

[FR Doc. 05–17897 Filed 9–15–05; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind Or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments must be received on or before: October 16, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

Parts Kit, Hydraulic Transmission.
NSN: 2520–01–398–4589—Parts Kit, Hydraulic Transmission.
NPA: Goodwill Industries—Knoxville, Inc., Knoxville, Tennessee.
Contracting Activity: Defense Supply Center Columbus, Columbus, Ohio.

Services

Service Type/Location: Custodial Services; Law Enforcement Center, FR 19, MP2 South of San Miguel, Sells, Arizona.
NPA: J.P. Industries, Inc., Tucson, Arizona.
Contracting Activity: Department of Homeland Security, Washington, DC.
Service Type/Location: Custodial Services; Somersworth U.S. Army Reserve Center, Route 108, Somersworth, New Hampshire.
NPA: Northern New England Employment Services, Portland, Maine.
Contracting Activity: Devens Reserve Forces Training Area, Devens, Massachusetts.
Service Type/Location: Custodial Services; U.S. Army Reserve Center and Maintenance Shop, 7400 S. Pulaski Road, Chicago, Illinois.
NPA: Jewish Vocational Service and Employment Center, Chicago, Illinois.
Contracting Activity: 88th Regional Support Command, Fort Snelling, Minnesota.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E5–5087 Filed 9–15–05; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind Or Severely Disabled.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Effective October 16, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: On July 8, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 39484) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Service

Service Type/Location: Custodial Services; U.S. Post Office—Brooklyn, 271 Cadman Plaza East, Brooklyn, New York.
NPA: NYSARC, Inc., NYC Chapter, New York, New York.
Contracting Activity: GSA, Property Management Center, New York, New York.

This action does not affect current contracts awarded prior to the effective date

of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E5–5088 Filed 9–15–05; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Gold Technology Ltd., Hero Peak Ltd., Joanna Liu. Oriental Trading Corp., Portson Trading Ltd., Zhenke International Trading

In the Matters of: Gold Technology Limited, Flat 23C, 97 High Street, Hong Kong; Hero Peak Limited, Flat C, Block 4, 11/F Golden Bldg, 145 Fuk Wa Street, Sham Shui, Po, Kowloon, Hong Kong, and, Room D, 11/F, Fui Nam Building, 48–51 Connaught Road West, Hong Kong; Joanna Liu, Flat 23C, 97 High Street, Hong Kong; Oriental Trading Corporation, 1st Floor, Masco Plaza, Blue Area, P.O. Box 2879, Islamabad, Pakistan; Portson Trading Limited, Room D, 8/F, 217–223 Tung Choi Street, Mongkok, Kowloon, Hong Kong, and, Room 709 Wing Shan Tower, 173 Des Voeux Road Central, Hong Kong, and, Room 2208, 22/F, 118 Connaught Road West, Hong Kong, and, Zhenke International Trading Co. Ltd., Tianjin Port Free Trade Zone, Room 801, Gold Beauty Building No. 99, Haibain 9 Road, TPFTZ, Tianjin, Peoples Republic of China, Respondents; *Order Renewing Temporary Denial Order As To Goldtechnology Limited, Hero Peak Limited, Joanna Liu, Oriental Trading Corporation, Portson Trading Limited, and Zhenke International Trading Co. Ltd.*

Pursuant to Section 766.24 of the Export Administration Regulations (''EAR''), the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested that I renew for 180 days an Order temporarily denying export privileges of the following:

(1) GOLD TECHNOLOGY LIMITED, Flat 23C, 97 High Street, Hong Kong;

(2) HERO PEAK LIMITED, Flat C, Block 4, 11/F Golden Bldg, 145 Fuk Wa Street, Sham Shui, Po, Kowloon, Hong Kong and Room D, 11/F, Fui Nam Building, 48–51 Connaught Road West, Hong Kong;

(3) JOANNA LIU, Flat 23C, 97 High Street, Hong Kong;

(4) ORIENTAL TRADING CORPORATION, 1st Floor, Masco Plaza, Blue Area, P.O. Box 2879, Islamabad, Pakistan;

(5) PORTSON TRADING LIMITED, Room D, 8/F, 217–223 Tung Choi Street, Mongkok, Kowloon, Hong Kong and Room 709 Wing Shan Tower, 173 Des Voeux Road Central, Hong Kong, and Room 2208, 22/F, 118 Connaught Road West, Hong Kong; and

(6) ZHENKE INTERNATIONAL TRADING CO. LTD. Tianjin Port Free Trade Zone, Room 801, Gold Beauty Building No. 99, Haibain 9 Road, TPFTZ, Tianjin, Peoples Republic of China (hereinafter collectively referred to as the ''Respondents'').

On March 8, 2005, I found that the Respondents [1] had conspired to undertake acts that violated the EAR, that such violations had been deliberate and covert, and that there was a strong likelihood of future violations, particularly given the nature of the transactions and the elaborate steps that had been taken by the Respondents to avoid detection by the U.S. Government while knowing that their actions were in violation of the EAR. 70 FR 12442 (Mar. 14, 2005). This finding was based on evidence presented by BIS that indicated that Respondents had conspired with others, known and unknown, to cause items subject to the EAR to be illegally exported to Pakistan, that they caused exports of items controlled for nuclear non-proliferation reasons to Pakistan with knowledge that violations of the EAR would occur, and they took actions intending to violate the EAR.

BIS continues to investigate this matter and believes that all of the facts found in the original Order continue to justify the renewal of the Order, especially given the nature of the transactions and the steps that have been taken by Respondents to avoid detection by the U.S. Government while knowing their actions were in violation of the EAR. BIS believes evidence described in the initial request for the Order, including evidence that indicates the Respondents intend to continue acquiring or purchasing significant amounts of U.S. origin items, supports this Order.

Based on the evidence submitted by BIS, I find that renewal of the Order naming Respondents is necessary, in the public interest, to prevent an imminent violation of the EAR. A copy of the request for renewal of this Order was served upon Respondents in accordance with the requirements of 15 CFR § 766.24 of the EAR, and no responses were received in opposition to this request within the applicable time period described in that section.

It Is Therefore Ordered:

First, that the Respondents, at the address listed above, and their successors and assigns and when acting on behalf of any of the Respondents, their officers, employees, agents or representatives, (collectively, the ''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (''EAR''), or in any other activity subject to the EAR including, but limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or order, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Persons any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Persons acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Persons of any item subject to the EAR that has been exported from the United States;

D. Obtain from the Denied Persons in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has

[1] Sunford Trading Limited, Room 2208, 22/F, 118 Connaught Road West, Hong Kong, was included as a Respondent in the initial Order, but was not included in the request for renewal of the Order because of an unrelated three year denial order on the company that became effective on August 25, 2005 (70 FR 49910 Aug. 25, 2005).

been or will be exported from the United States and which is owned, possessed or controlled by the Denied Persons, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Persons if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to any of the Respondents by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Section 766.24(e) of the EAR, the Respondents may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. The Respondents may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on the Respondents, and shall be published in the **Federal Register**.

This Order is effective on September 11, 2005 and shall remain in effect for 180 days.

Entered this 9th day of September, 2005.

Wendy Wysong,

Deputy Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 05–18375 Filed 9–15–05; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–559–801, A 412–801]

Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 13, 2005, the Department of Commerce published the preliminary results of the administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, Singapore and the United Kingdom. The reviews cover 19 manufacturers/exporters. The period of review is May 1, 2003, through April 30, 2004.

Based on our analysis of the comments received, we have made changes, including corrections of certain programming and other clerical errors, in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted–average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of the Reviews.''

EFFECTIVE DATE: September 16, 2005.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Kristin Case, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 2004, in accordance with 19 CFR 351.213(b), we published a notice of initiation of administrative reviews of these orders (68 FR 39055). The companies for which we are conducting administrative reviews are as follows:

France:
- ❇ SKF France S.A. or Sarma (SKF France)
- ❇ SNR Roulements or SNR Europe (SNR)

Germany:
- ❇ Gebrüder Reinfurt GmbH & Co., KG, Wurzberg, Germany (GRW)
- ❇ INA–Schaeffler KG; INA Vermogensverwaltungsgesellschaft GmbH; INA Holding Schaeffler KG; FAG Kugelfischer Georg–Schaefer AG; FAG Automobiltechnik AG; FAG OEM und Handel AG; FAG Komponenten AG; FAG Aircraft/Super Precision Bearings GmbH; FAG Industrial Bearings AG; FAG Sales Europe GmbH; FAG International Sales and Service GmbH (collectively FAG/INA)
- ❇ SKF GmbH (SKF Germany)

Italy:
- ❇ FAG Italia S.p.A.; FAG Automobiltechnik AG; FAG OEM und Handel AG (collectively FAG Italy)
- ❇ SKF Industrie S.p.A.; SKF RIV–SKF Officine di Villas Perosa S.p.A.; RFT S.p.A.; OMVP S.p.A. (collectively SKF Italy)

Japan:
- ❇ Asahi Seiko Co., Ltd. (Asahi)
- ❇ Koyo Seiko Co., Ltd. (Koyo)
- ❇ NSK Ltd. (NSK)
- ❇ NTN Corporation (NTN)
- ❇ Nankai Seiko Co., Ltd. (SMT)
- ❇ Nippon Pillow Block Company, Ltd. (NPB)
- ❇ Osaka Pump Co., Ltd. (Osaka Pump)
- ❇ Sapporo Precision Inc., Kitanihon Seiko Co., Ltd., and Sanbi Co., Ltd. (collectively Sapporo)
- ❇ Takeshita Seiko Co., Ltd. (Takeshita)

Singapore:
- ❇ NMB Singapore Ltd.; Pelmec Industries (Pte.) Ltd.; NMB Technologies Corporation (collectively NMB/Pelmec)

United Kingdom:
- ❇ The Barden Corporation (UK) Limited; FAG (U.K.) Limited (collectively Barden/FAG)
- ❇ SKF Aeroengine Bearings UK (formerly known as Aeroengine Bearings UK or NSK Aerospace) (SKF UK)

On May 13, 2005, the Department published the preliminary results of the administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom (70 FR 25538). The period of review is May 1, 2003, through April 30, 2004. We invited interested parties to comment on the preliminary results. At the request of certain parties, we held hearings for general issues on June 28, 2005, and for Japan–specific issues on July 1, 2005. The Department has conducted these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Orders

The products covered by these orders are ball bearings (other than tapered roller bearings) and parts thereof. These

products include all bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following *Harmonized Tariff Schedules of the United States* (HTSUS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

Although the HTSUS item numbers above are provided for convenience and customs purposes, written descriptions of the scope of these orders remain dispositive.

The size or precision grade of a bearing does not influence whether the bearing is covered by one of the orders. These orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, etc.) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of the these orders. For unfinished parts, such parts are included if (1) they have been heat–treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by these orders are those that will be subject to heat treatment after importation. The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scope of these orders.

For a listing of scope determinations which pertain to the orders, see the Scope Determination Memorandum (Scope Memorandum) from the Antifriction Bearings Team to Laurie Parkhill, dated April 15, 2005. The Scope Memorandum is on file in the Central Records Unit (CRU), main Commerce building, Room B–099, in the General Issues record (A–100–001) for the 03/04 reviews.

Analysis of the Comments Received

All issues raised in the case and rebuttal briefs by parties to the concurrent administrative reviews of the orders on ball bearings and parts thereof are addressed in the ''Issues and Decision Memorandum'' (Decision Memo) from Barbara E. Tillman, Acting Deputy Assistant Secretary, to Joseph A. Spetrini, Acting Assistant Secretary, dated September 12, 2005, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. This Decision Memo, which is a public document, is on file in the CRU, main Commerce building, Room B–099, and is accessible on the Web at http://ia.ita.doc.gov/frn/index.html. The paper copy and electronic version of the Decision Memo are identical in content.

Sales Below Cost in the Home Market

The Department disregarded home–market sales that failed the cost–of–production test for the following firms for these final results of reviews:

Country	Company
France	SKF, SNR
Germany	GRW, INA/FAG, SKF Germany
Italy	FAG Italy, SKF Italy
Japan	Asahi, Koyo, Nankai Seiko, NPB, NSK, NTN, Osaka Pump, Takeshita
Singapore	NMB/Pelmec
United Kingdom	Barden

Use of Adverse Facts Available

In accordance with section 776(a) of the Act, we determine that the use of facts available as the basis for the weighted–average dumping margin is appropriate for SKF UK. SKF UK did not submit a response to our antidumping duty questionnaire.[1] Consequently, we find that it has withheld ''information that has been requested by the administering authority'' under section 776(a)(2)(A) of the Act and we must use facts otherwise available to calculate a margin for SKF UK.

In accordance with section 776(b) of the Act, we are making an adverse inference in our application of the facts available. This is appropriate because SKF UK has not provided a response to our request for information and has not provided any acceptable rationale for its failure to respond. Therefore, we find that SKF UK has not acted to the best of its ability in providing us with relevant information which is under its control. As adverse facts available for SKF UK, we have applied the highest rate which we have calculated for any company in any segment of the proceeding on ball bearings from the United Kingdom. We have selected this rate because it is sufficiently high as to reasonably assure that SKF UK does not obtain a more favorable result by failing to cooperate. We calculated this rate, 61.14 percent, for SKF UK in the original less–than-fair–value investigation. See *Antidumping Duty Orders and Amendments to the Final Determinations of Sales at Less Than Fair Value: Ball Bearings and Parts Thereof From the United Kingdom*, 54 FR 20910 (May 15, 1989).

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information used for facts available using independent sources reasonably at its disposal. Information from a prior segment of the proceeding or from another company in the same proceeding constitutes secondary information. The Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, at 870 (1994) (SAA), provides that the word ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. As explained in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), in order to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. Unlike other types of information, however, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, with respect to an administrative review, if the Department

[1] See memorandum from analyst to Laurie Parkhill, ''*The Use of Facts Available and Corroboration of Secondary Information for Aeroengine Bearings UK in the 2003/2004 Administrative Review of the Antidumping Duty Order on Ball Bearings and Parts Thereof from the United Kingdom*,'' dated May 6, 2005 (*Corroboration Memo*).

chooses as facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period.

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. See *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996), where the Department disregarded the highest dumping margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Further, in accordance with *F.LII De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1034 (Fed. Cir. 2000), we also examine whether information on the record would support the selected rate as reasonable facts available. This rate is the current cash–deposit rate for a number of firms, was applied to SKF UK in the previous review, and there is no information reasonably at our disposal that would indicate that there are circumstances which would render the margin not relevant at this time. Therefore, we find that the rate which we are using for these final results has probative value. See *Corroboration Memo*.

Furthermore, there is no information on the record that demonstrates that the rate we have selected is inappropriate for use as the total adverse facts–available rate for the company in question. Therefore, we consider the selected rate to have probative value with respect to the firm in question in this review and to reflect the appropriate adverse inferences.

Other Changes Since the Preliminary Results

Based on our analysis of comments received, we have made revisions that have changed the results for certain firms. We have corrected programming and clerical errors in the preliminary results, where applicable. Any alleged programming or clerical errors about which we or the parties do not agree are discussed in section 8 of the Decision Memo.

Final Results of the Reviews

We determine that the following percentage weighted–average margins on ball bearings and parts thereof exist for the period May 1, 2003, through April 30, 2004:

FRANCE

Company	Margin
SKF France	8.41
SNR	11.93

GERMANY

Company	Margin
FAG/INA	5.65
GRW	4.58
SKF Germany	16.06

ITALY

Company	Margin
FAG Italy	5.88
SKF Italy	2.59

JAPAN

Company	Margin
Asahi	1.33
Koyo	12.78
NSK	8.28
NTN	5.93
Nankai Seiko (SMT)	7.15
NPB	15.83
Osaka Pump	6.14
Sapporo	13.01
Takeshita	7.38

SINGAPORE

Company	Margin
NMB/Pelmec	3.56

UNITED KINGDOM

Company	Margin
Barden/FAG	2.78
SKF UK	61.14

Assessment Rates

The Department will determine and CBP shall assess antidumping duties on all appropriate entries. We will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of reviews. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an importer/customer–specific assessment rate or value for subject merchandise.The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the period of review produced by companies included in these final results of reviews for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Notice of Policy Concerning Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

a. Export Price

With respect to export–price (EP) sales, we divided the total dumping margins (calculated as the difference between normal value and the EP) for each exporter's importer or customer by the total number of units the exporter sold to that importer or customer. We will direct CBP to assess the resulting per–unit dollar amount against each unit of merchandise on each of that importer's or customer's entries under the relevant order during the review period.

b. Constructed Export Price

For constructed export–price (CEP) sales (sampled and non–sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct CBP to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. See 19 CFR 351.212(b)(1).

Cash–Deposit Requirements

To calculate the cash–deposit rate for each respondent (*i.e.*, each exporter and/or manufacturer included in these reviews), we divided the total dumping margins for each company by the total net value of that company's sales of merchandise during the review period subject to each order.

To derive a single deposit rate for each respondent, we weight–averaged the EP and CEP deposit rates (using the EP and CEP, respectively, as the weighting factors). To accomplish this when we sampled CEP sales, we first calculated the total dumping margins for all CEP sales during the review period by multiplying the sample CEP margins by the ratio of total days in the review period to days in the sample weeks. We then calculated a total net

value for all CEP sales during the review period by multiplying the sample CEP total net value by the same ratio. Finally, we divided the combined total dumping margins for both EP and CEP sales by the combined total value for both EP and CEP sales to obtain the deposit rate.

We will direct CBP to collect the resulting percentage deposit rate against the entered customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. Entries of parts incorporated into finished bearings before sales to an unaffiliated customer in the United States will receive the respondent's deposit rate applicable to the order.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative reviews for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash–deposit rates for the reviewed companies will be the rates shown above; (2) for previously reviewed or investigated companies not listed above, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less–than-fair–value (LTFV) investigation but the manufacturer is, the cash–deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash–deposit rate for all other manufacturers or exporters will continue to be the ''All Others'' rate for the relevant order made effective by the final results of review published on July 26, 1993. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al: Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729 (July 26, 1993). For ball bearings from Italy, see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 61 FR 66472, 66521 (December 17, 1996). These rates are the ''All Others'' rates from the relevant LTFV investigation.

These deposits requirements shall remain in effect until publication of the final results of the next administrative reviews.

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO are sanctionable violations.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: September 12, 2005.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix

Comments and Responses

1. Offsetting of Negative Margins
2. Model–Match Methodology
3. Acquisition Cost vs. Suppliers Cost
4. U.S. Repacking Costs
5. CEP Profit
6. Affiliation
7. Billing Adjustments
8. Clerical Errors
9. Miscellaneous Issues

A. NSK–U.S. Selling Expense: Treatment of Certain Japanese–Worker Expenses

B. Bearing–Design Types

C. Ordinary Course of Trade: High–Profit Sales

D. Sample Sales in the Home Market

E. Inventory Carrying Costs

F. U.S. Customs Duties

G. Packing Expense for Home–Market Sales

H. Indirect Selling Expenses Incurred in Japan

I. Indirect Selling Expenses Incurred in the United States

[FR Doc. E5–5090 Filed 9–15–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091305D]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will relocate previously published public meetings to St. Petersburg, FL due to the devastation in New Orleans, LA by Hurricane Katrina.

DATES: The meetings will be held October 3–6, 2005.

ADDRESSES: These meetings will now be held at the Hilton St. Petersburg, 333 First Street South, St. Petersburg, FL 33701. These meetings were originally scheduled at the Wyndham Bourbon Orleans, 717 Orleans Street, New Orleans, LA 70116, but are being relocated due to Hurricane Katrina.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813.348.1630.

SUPPLEMENTARY INFORMATION:

Council

Wednesday, October 5, 2005

8:30 a.m. – Convene.

8:45 a.m. – 12 noon - Receive public testimony on (a) Final Reef Fish Amendment 18A/EA, (b) Final Red Grouper Regulatory Amendment, and (c) Exempted fishing permits (if any).

1:30 p.m. – 3 p.m. - Receive the Reef Fish Management Committee Report.

3 p.m. – 5:30 p.m. - Receive the joint Reef Fish/Shrimp Management Committees Report.

Thursday, October 6, 2005

8 a.m. – 9 a.m. - Litigation Briefing (CLOSED SESSION).

9 a.m. – 10:30 a.m. - Receive the joint Reef Fish/Shrimp Management Committees Report.

10:30 a.m. – 11 a.m. - Receive the Migratory Species Management Committee Report.

11 a.m. – 11:15 a.m. - Receive the joint Reef Fish/Mackerel/Red Drum Committees Report.

11:15 a.m. – 11:30 a.m. - Receive the Administrative Policy Committee Report.

11:30 a.m. – 11:45 a.m. - Receive the Budget/Personnel Committee Report.

11:45 a.m. – 12 noon - Receive the Mackerel Management Committee Report.

12 noon – 12:15 p.m. - Receive the ICCAT Advisory Committee Report.

12:15 p.m. – 12:30 p.m. - Receive the SAFMC Liaison Report.

12:30 p.m. – 12:45 p.m. - Receive the Enforcement Reports.

12:45 p.m. – 1 p.m. - Receive the Regional Administrator's Report.

1 p.m. – 1:15 p.m. - Receive the State Director's Reports.

1:15 p.m. – 1:30 p.m. - Other Business.

1:30 p.m. – 1:45 p.m. - Election of Chair and Vice-Chair.

Committee

Monday, October 3, 2005

8:30 a.m. – 12 noon - The Reef Fish Management Committee will review public hearing summaries, public letters, AP recommendations, SSC recommendations, Federal recommendations and committee recommendations on Final Reef Fish Amendment 18A/EA, which addresses the grouper fishery and make recommendations to Council. The Committee will review Public Hearing Draft Reef Fish Amendment 26 for a red snapper Individual Fishing Quota (IFQ) program and may modify their preferred alternatives for management measures for public hearings. The Committee will then review the Final Red Grouper Regulatory Amendment and make recommendations to Council.

1:30 p.m. - 5:30 p.m. - The joint Reef Fish/Shrimp Management Committees will review Red Snapper Management Scenarios based on the data provided by the new red snapper stock assessment conducted under the Southeast Data, Assessment and Review (SEDAR) process, which yields a peer-reviewed assessment. The Committees will review a scoping document for a Regulatory Amendment on By-catch Reduction Devices (BRDs) certification criterion and certification of new BRDs. The Committees will then review a scoping document for a joint Reef Fish/Shrimp amendment targeted at reducing shrimp trawl by-catch; by-catch in the directed reef fish fishery; and effort limitation alternatives for the shrimp fishery.

Tuesday, October 4, 2005

8:30 a.m. – 9:30 a.m. - The joint Reef Fish/Shrimp Committees will reconvene to complete their work.

9:30 a.m. – 10 a.m. - The Mackerel Management Committee will meet to discuss setting a control date for the Spanish mackerel fisheries.

10 a.m. – 10:30 a.m. - The Budget/Personnel Committee will meet to review the Council's CY 2006 Operating Budget.

10:30 a.m. – 12 noon - The Migratory Species Management Committee will hear a presentation on a proposed HMS amendment.

1:30 p.m. – 3 p.m. - The Administrative Policy Committee will meet to review current Scientific & Statistical Committee (SSC) Operations. They will also discuss the possibility of holding a Joint SSC/Council meeting and a Joint Advisory Panel (AP)/Council Meeting. The Committee will then consider a 2–year term for Council Chair and Vice-Chair, and discuss the pros and cons of limiting Council meetings to 4 or 5 per year.

3 p.m. – 5:30 p.m. - The joint Reef Fish/Mackerel/Red Drum Management Committees will hear a presentation on offshore aquaculture in New Hampshire; hear a presentation on the Administrative Aquaculture Bill; and review an options paper for an Aquaculture Amendment.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: September 13, 2005.

Emily Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–5089 Filed 9–15–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0107]

Federal Acquisition Regulation; Submission for OMB Review; Notice of Radioactive Materials

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning notice of radioactive materials. A request for public comments was published in the **Federal Register** at 70 FR 40006, on July 12, 2005. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before October 17, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035,

Washington, DC 20405. Please cite OMB Control No.9000–0107, Notice of Radioactive Materials, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Kimberly Marshall, Contract Policy Division, GSA (202) 219–0986.

SUPPLEMENTARY INFORMATION:

A. Purpose

The clause at FAR 52.223–7, Notice of Radioactive Materials, requires contractors to notify the Government prior to delivery of items containing radioactive materials. The purpose of the notification is to alert receiving activities that appropriate safeguards may need to be instituted. The notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the contractor which will put users of the items on notice as to the hazards involved.

B. Annual Reporting Burden

Respondents: 500.
*Responses Per Respondent:*5.
Annual Responses: 2,500.
Hours Per Response: 1.
Total Burden Hours: 2,500.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0107, Notice of Radioactive Materials, in all correspondence.

Dated:August 25, 2005

Linda K. Nelson

Acting Director,Contract Policy Division.

[FR Doc. 05–18430 Filed 9–15–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0082]

Federal Acquisition Regulation;Submission for OMB Review; Economic Purchase Quantities–Supplies

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0082).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning economic purchase quantities–supplies. A request for public comments was published in the **Federal Register** at 70 FR 40006, on July 12, 2005. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before October 17, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jerry Zaffos, Contract Policy Division, GSA (202) 208–6091.

SUPPLEMENTARY INFORMATION:

A. Purpose

The provision at 52.207–4, Economic Purchase Quantities–Supplies, invites offerors to state an opinion on whether the quantity of supplies on which bids, proposals, or quotes are requested in solicitations is economically advantageous to the Government. Each offeror who believes that acquisitions in different quantities would be more advantageous is invited to (1) recommend an economic purchase quantity, showing a recommended unit and total price, and (2) identify the different quantity points where significant price breaks occur. This information is required by Public Law 98–577 and Public Law 98–525.

B. Annual Reporting Burden

Respondents: 1,524.
Responses Per Respondent: 25.
Annual Responses: 38,100.
Hours Per Response: .83.
Total Burden Hours: 31,623.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0082, Economic Purchase Quantities–Supplies, in all correspondence.

Dated: August 23, 2005

Julia B. Wise

Director,Contract Policy Division.

[FR Doc. 05–18431 Filed 9–15–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0071]

Federal Acquisition Regulation;Submission for OMB Review; Price Redetermination

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0071).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning price redetermination. A request for public comments was published in the **Federal Register** at 70 FR 40005, on July 12, 2005. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and

clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before October 17, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jerry Zaffos, Contract Policy Division, GSA (202) 208–6091.

SUPPLEMENTARY INFORMATION:

A. Purpose

Fixed-price contracts with prospective price redetermination provide for firm fixed prices for an initial period of the contract with prospective redetermination at stated times during performance. Fixed price contracts with retroactive price redetermination provide for a fixed ceiling price and retroactive price redetermination within the ceiling after completion of the contract. In order for the amounts of price adjustments to be determined, the firms performing under these contracts must provide information to the Government regarding their expenditures and anticipated costs. The information is used to establish fair price adjustments to Federal contracts.

B. Annual Reporting Burden

Respondents: 3,500.

Responses Per Respondent: 2.

Annual Responses: 7,000.

Hours Per Response: 1.

Total Burden Hours: 7,000.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0071, Price Redetermination, in all correspondence.

Dated: August 23, 2005

Julia B. Wise

Director,Contract Policy Division.

[FR Doc. 05–18432 Filed 9–15–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0080]

Federal Acquisition Regulation; Submission for OMB Review; Integrity of Unit Prices

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0080).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning integrity of unit prices. A request for public comments was published in the **Federal Register** at 70 FR 40005, on July 12, 2005. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before October 17, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jerry Olson, Contract Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 15.408(f) and the clause at FAR 52.215–14, Integrity of Unit Prices, require offerors and contractors under Federal contracts that are to be awarded without adequate price competition to identify in their proposals those supplies which they will not manufacture or to which they will not contribute significant value. The policies included in the FAR are required by section 501 of Public Law 98–577 (for the civilian agencies) and section 927 of Public Law 99–500 (for DOD and NASA). The rule contains no reporting requirements on contracts with commercial items.

B. Annual Reporting Burden

Respondents: 1,000.
Responses Per Respondent: 10.
Annual Responses: 10,000.
Hours Per Response: 1 hour.
Total Burden Hours: 10,000.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0080, Integrity of Unit Prices, in all correspondence.

Dated:September 8, 2005

Julia B. Wise

Director,Contract Policy Division.

[FR Doc. 05–18433 Filed 9–15–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0083]

Federal Acquisition Regulation; Submission for OMB Review; Qualification Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an

extension of a currently approved information collection requirement concerning qualification requirements. A request for public comments was published in the **Federal Register** at 70 FR 41211, on July 18, 2005. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before October 17, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Nelson, Contract Policy Division, GSA (202) 501–1900.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the Qualified Products Program, an end item, or a component thereof, may be required to be prequalified. The solicitation at FAR 52.209–1, Qualification Requirements, requires offerors who have met the qualification requirements to identify the offeror's name, the manufacturer's name, source's name, the item name, service identification, and test number (to the extent known).

The contracting officer uses the information to determine eligibility for award when the clause at 52.209–1 is included in the solicitation. The offeror must insert the offeror's name, the manufacturer's name, source's name, the item name, service identification, and test number (to the extent known). Alternatively, items not yet listed may be considered for award upon the submission of evidence of qualification with the offer.

B. Annual Reporting Burden

Respondents: 2,207.
Responses Per Respondent: 100.
Annual Responses: 220,700.
Hours Per Response: .25.
Total Burden Hours: 55,175.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0083, Qualification Requirements, in all correspondence.

Dated: September 8, 2005

Julia B. Wise

Director,Contract Policy Division.

[FR Doc. 05–18434 Filed 9–15–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Proposed Changes in FERC Gas Tariff

September 9, 2005.

	Docket No.
Algonquin Gas Transmission, LLC.	RP05–601–000
ANR Pipeline Company	RP05–633–000
ANR Storage Company	RP05–611–000
Black Marlin Pipeline Company.	RP05–620–000
Blue Lake Gas Storage Company.	RP05–612–000
Columbia Gas Transmission Corporation.	RP05–594–000
Columbia Gulf Transmission Company.	RP05–587–000
Crossroads Pipeline Company.	RP05–596–000
Dauphin Island Gathering Partners.	RP05–649–000
Destin Pipeline Company, L.L.C.	RP05–621–000
Discovery Gas Transmission LLC.	RP05–613–000
Dominion Cove Point LNG, LP.	RP05–614–000
Dominion Transmission, Inc.	RP05–624–000
East Tennessee Natural Gas, LLC.	RP05–609–000
Equitrans, L.P	RP05–622–000
Florida Gas Transmission Company.	RP05–634–000
Gas Transmission Northwest Corporation.	RP05–635–000
Granite State Gas Transmission Company.	RP05–602–000
Great Lakes Gas Transmission Limited Partnership.	RP05–583–000
Gulfstream Natural Gas System, L.L.C.	RP05–610–000
Irquois Gas Transmission System, L.P.	RP05–632–000
Maritimes & Northeast Pipeline, L.L.C.	RP05–608–000
MarkWest New Mexico L.P	RP05–584–000
National Fuel Gas Supply Corporation.	RP05–631–000
North Baja Pipeline, LLC ...	RP05–630–000
Northern Border Pipeline Company.	RP05–615–000
Northern Border Pipeline Company.	RP05–616–000
Northern Natural Gas Company.	RP05–645–000
Paiute Pipeline Company ..	RP05–607–000
Panhandle Eastern Pipe Line Company, LP.	RP05–644–000
Petal Gas Storage L.L.C ...	RP05–639–000
Pine Needle LNG Company, LLC.	RP05–590–000
Portland Natural Gas Transmission System.	RP05–591–000
SCG Pipeline Inc	RP05–592–000
Sea Robin Pipeline Company, LLC.	RP05–642–000
Southern LNG, Inc.	RP05–638–000
Southern Natural Gas Company.	RP05–643–000
Southwest Gas Storage Company.	RP05–637–000
Southwest Gas Transmission Company.	RP05–593–000
Tennessee Gas Pipeline Company.	RP05–640–000
Texas Eastern Transmission, LP.	RP05–595–000
Texas Gas Transmission, LLC.	RP05–585–000
Transcontinental Gas Pipe Line Corporation.	RP05–588–000
Transwestern Pipeline Company, LLC.	RP05–641–000
Trunkline Gas Company, LLC.	RP05–627–000
Trunkline LNG Company, LLC.	RP05–628–000
Tuscurora Gas Transmission Company.	RP05–648–000
Vector Pipeline L.P	RP05–629–000
Venice Gathering System, L.L.C.	RP05–655–000
WestGas Interstate, Inc	RP05–626–000
Williston Basin Interstate Pipeline Company.	RP05–589–000

Take notice that the above-referenced pipelines tendered for filing their respective tariff sheets, pursuant to § 154.402 of the Commission's regulations, to reflect the Commission's change in the unit rate for the Annual Charge Adjustment (ACA) surcharge to be applied to rates for recovery of 2005 Annual Charges. The proposed effective date of the tariff sheets is October 1, 2005.

The above-referenced pipelines state that the purpose of their filings is to reflect the revised ACA effective for the twelve-month period beginning October 1, 2005. The pipelines further state that their tariff sheets reflect a decrease of $0.0001 per Dth in the ACA adjustment surcharge, resulting in a new ACA rate of $0.0018 Dth as specified by the Commission in its invoice dated June

30, 2005, for the Annual Charge Billing—Fiscal year 2005.

Due to the large number of pipelines that have filed to comply with the Annual Charge Adjustment Billing, the Commission is issuing this single notice of the filings included in the caption above.

Any person desiring to become part in any of the listed dockets must file a separate motion to intervene in each docket for which they wish party status.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Intervention/Protest Date: 5 p.m. Eastern Time September 13, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5061 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–646–000]

ANR Pipeline Company; Notice of Material Deviation Filing

September 8, 2005.

Take notice that on September 1, 2005, ANR Pipeline Company (ANR) tendered for filing an FTS–1 service agreement and a gathering agreement between ANR and Indeck-Corinth Limited Partnership (Indeck); and two acknowledgment and consent agreements entered into among ANR and Indeck and ABN–AMRO Bank, N.V., and General Electric Capital Corporation, respectively.

ANR requests that the consent agreements be approved as material deviations and that the associated tariff sheets become effective on September 7, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5054 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–471–001]

Black Marlin Pipeline Company; Notice of Compliance Filing

September 8, 2005.

Take notice that on August 31, 2005, Black Marlin Pipeline Company (Black Marlin) tendered for filing and acceptance the following revised tariff sheet in its FERC Gas Tariff, Original Volume No. 1, in compliance with the letter order issued in this proceeding on August 26, 2005, to be effective September 1, 2005:

Substitute Ninth Revised Sheet No. 201A

Black Marlin further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to

receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5080 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–544–001]

CenterPoint Energy-Mississippi River Transmission Corporation; Notice of Tariff Filing

September 8, 2005.

Take notice that on August 30, 2005, CenterPoint Energy-Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective October 1, 2005:

Substitute Fifty-Fourth Revised Sheet No. 5
Substitute Fifty-Fourth Revised Sheet No. 6
Substitute Fifty-First Revised Sheet No. 7

MRT states that the purpose of this filing is to correct an administrative oversight in its August 5, 2005 filing to comply with the Commission's Order issued January 16, 2002 in Docket No. RP01–292.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5038 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–600–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 8, 2005.

Take notice that on August 31, 2005, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, one firm transportation service agreement (FTSA) and Twelfth Revised Sheet No. 1 to become effective October 1, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5043 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–597–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 8, 2005.

Take notice that on August 31, 2005, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of September 1, 2005:

Fourteenth Revised Sheet No. 262
Second Revised Sheet No. 488
Original Sheet No. 489

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5040 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–433–001]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

September 8, 2005.

Take notice that on August 30, 2005, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff), the following revised tariff sheets, with a proposed effective date of September 1, 2005:

Fourteenth Revised Sheet No. 456
Second Revised Sheet No. 457

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant and all parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5075 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–598–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 8, 2005.

Take notice that on August 31, 2005, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of September 1, 2005:

Eighth Revised Sheet No. 125
First Revised Sheet No. 288
Original Sheet No. 289

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5041 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–434–001]

Columbia Gulf Transmission Company; Notice of Compliance Filing

September 8, 2005.

Take notice that on August 30, 2005, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff), the following revised tariff sheets, with a proposed effective date of September 1, 2005:

Tenth Revised Sheet No. 286
First Revised Sheet No. 286A

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant and all parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5076 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–403–001]

Dauphin Island Gathering Partners; Notice of Revised Cash-Out Report

September 9, 2005.

Take notice that on July 1, 2005, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing a revised Schedule A for its June 27, 2005 Cash Out Report. Dauphin Island states that copies of the filing are being served contemporaneously on its customers and other interested parties.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Intervention, Protest Date: 5 p.m. Eastern Time, September 16, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5059 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–495–001]

Dauphin Island Gathering Partners; Notice of Proposed Changes in FERC Gas Tariff

September 8, 2005.

Take notice that on August 31, 2005, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing revised tariff sheets for inclusion as part of its FERC Gas Tariff, First Revised Volume No. 1.

Dauphin Island states that this filing is submitted to comply with the Commission's August 16, 2005 Letter Order in this proceeding.

Dauphin Island states that copies of the filing are being served on all parties on the official service list.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5063 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–387–002]

Enbridge Pipelines (AlaTenn) L.L.C. Notice of Proposed Changes in FERC Gas Tariff

September 8, 2005.

Take notice that on September 1, 2005, Enbridge Pipelines (AlaTenn) L.L.C. (AlaTenn) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become effective on September 1, 2005.

Third Revised Sheet No. 104

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5071 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–503–001]

Equitrans, L.P.; Notice of Proposed Changes in Ferc Gas Tariff

September 8, 2005.

Take notice that on August 31, 2005, Equitrans, L.P. (Equitrans) tendered for filing, as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, proposed to become effective on September 1, 2005.

Substitute Sixth Revised Sheet No. 308
Substitute Third Revised Sheet No. 309

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5036 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–164–005]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

September 8, 2005.

Take notice that on August 31, 2005, Equitrans, L.P. (Equitrans) submitted a set of proposed revised tariff sheets in compliance with the Commission's order issued on August 1, 2005 in the captioned proceeding. Equitrans states that the tariff sheets, listed on Attachment A to the filing, are proposed to be effective August 1, 2005.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5069 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–625–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 8, 2005.

Take notice that on August 31, 2005, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective October 1, 2005:

Seventy-Third Revised Sheet No. 8A
Sixty-Fifth Revised Sheet No. 8A.01
Sixty-Fifth Revised Sheet No. 8A.02
Twenty-Fifth Revised Sheet No. 8A.04
Sixty-Eighth Revised Sheet No. 8B
Sixty-First Revised Sheet No. 8B.01
Seventeenth Revised Sheet No. 8B.02

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention

or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5052 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–076]

Gas Transmission Northwest Corporation; Notice of Proposed Change in Ferc Gas Tariff

September 8, 2005.

Take notice that on August 31, 2005, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, the following tariff sheet, to become effective September 1, 2005:

Twenty-Fourth Revised Sheet No. 15

GTN states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5035 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–458–001]

Gas Transmission Northwest Corporation; Notice of Compliance Filing

September 8, 2005.

Take notice that, on August 31, 2005, Gas Transmission Northwest Corporation (GTN) submitted a compliance filing pursuant to the Commission's August 16, 2005 Letter Order issued in this proceeding.

GTN states that copies of the filing were served on parties on the official service list.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5079 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–636–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

September 8, 2005.

Take notice that on August 31, 2005, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective October 1, 2005:

Original Sheet No. 9B
Tenth Revised Sheet No. 10
Eighth Revised Sheet No. 45

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as

appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5053 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–647–000]

Gulf South Pipeline Company, LP; Notice of Proposed Changes to FERC Gas Tariff

September 8, 2005.

Take notice that on September 1, 2005, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its Sixth Revised Volume No. 1 FERC Gas Tariff, the following tariff sheets, to become effective October 1, 2005.

Sixth Revised Volume No. 1

Second Revised Sheet No. 402
Second Revised Sheet No. 452
Fifth Revised Sheet No. 502
First Revised Sheet No. 901
Fifth Revised Sheet No. 1416
Fourth Revised Sheet No. 1417
Fifth Revised Sheet No. 3614
Sixth Revised Sheet No. 3706

Gulf South states that copies of this filing have been served upon its customers, state commissions and other interested parties. Gulf South further states that copies of the instant filing are available during regular business hours for public inspection in Gulf South's offices in Houston, Texas.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5055 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–659–000]

Gulf South Pipeline Company, LP; Notice of Filing of Request for Waiver of Tariff Provision

September 9, 2005.

Take notice that on September 8, 2005, Gulf South Pipeline Company, LP (Gulf South) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Request for Waiver of its tariff provision.

Gulf South filed the above-referenced request in order to petition the Commission to allow Gulf South to waive the provision of Section 18.3 of the General Terms and Conditions of its FERC Gas Tariff which requires Gulf South to prepare its transportation invoices on or before the ninth (9th) business day after the close of the production month. Gulf South requested expedited treatment of its request for waiver.

Gulf South states that a copy of the filing has been served upon all of its customers and affected state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210) by the comment date stated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 12, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5057 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–429–001]

Honeoye Storage Corporation; Notice of Proposed Change in FERC Gas Tariff

September 8, 2005.

Take notice that on September 1, 2005, Honeoye Storage Corporation (Honeoye) tendered for filing as part of its FERC Gas Tariff, First Revised Volume 1A, one revised tariff sheet to be effective September 1, 2005:

Substitute Fourth Revised Sheet No. 105

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5074 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–615–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

September 8, 2005.

Take notice that on August 31, 2005, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become effective September 1, 2005.

Seventy Ninth Revised Sheet No. 9

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5048 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–586–000]

North Baja Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

September 8, 2005.

Take notice that on August 30, 2005, North Baja Pipeline, LLC (NBP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following substitute tariff sheets, to be effective commensurate with the dates of the substituted tariff sheets:

Substitute Original Sheet No. 4
Substitute First Revised Sheet No. 4
Substitute Second Revised Sheet No. 4

NBP states that these tariff sheets are being submitted to correct historical tariff references to NBP's recourse rates. NBP is requesting that the Commission remove previously-filed Third Revised Sheet No. 4 from its database.

NBP further states that a copy of this filing has been served on NBP's jurisdictional customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR

154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5039 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–496–001]

North Baja Pipeline, LLC; Notice of Compliance Filing

September 8, 2005.

Take notice that, on August 31, 2005, North Baja Pipeline, LLC (NBP) submitted a compliance filing pursuant to the Commission's August 16, 2005 Letter Order issued in this proceeding.

NBP states that copies of the filing were served on parties on the official service list.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5056 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–599–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 8, 2005.

Take notice that on August 31, 2005, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff the following tariff sheets, to be effective October 1, 2005.

Third Revised Volume No. 1

Twenty-Sixth Revised Sheet No. 14

Original Volume No. 2

Forty-First Revised Sheet No. 2.1

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5042 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–441–001]

Petal Gas Storage, L.L.C.; Notice of Compliance Filing

September 8, 2005.

Take notice that on August 31, 2005, Petal Gas Storage, L.L.C. (Petal) tendered for filing the following revised tariff sheets for inclusion in Petal's FERC Gas Tariff, Original Volume No. 1. Petal requests that these revised tariff sheets be made effective September 1, 2005:

Substitute Third Revised Sheet No. 115E
Fifth Revised Sheet No. 116
Substitute Tenth Revised Sheet No. 129

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5077 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–483–001]

Pine Needle LNG Company, LLC; Notice of Compliance Filing

September 8, 2005.

Take notice that on September 1, 2005, Pine Needle LNG Company, LLC (Pine Needle) submitted a compliance filing pursuant to Commission's Order issued August 22, 2005, in Docket No. RP05–483–000.

Pine Needle states that copies of the filing were served on parties on the official service list.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 0426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5081 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–606–000]

Questar Southern Trails Pipeline Company; Notice of Tariff Filing

September 8, 2005.

Take notice that on August 31, 2005, Questar Southern Trails Pipeline Company (Southern Trails) tendered for filing, Second Revised Sheet No. 6 to its FERC Gas Tariff, Original Volume No. 1 to be effective August 31, 2005.

Southern Trails states that the tariff filing reflects the deletion of the Duke Energy Trading and Marketing, LLC firm service agreement No. 2692, that the agreement was amended and it is no longer a negotiated-rate agreement.

Southern Trails states that a copy of this filing has been served upon its customers and the Public Service Commissions of Utah, New Mexico, Arizona, and California.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5047 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–619–000]

SCG Pipeline, Inc.; Notice of Penalty Revenue Report

September 8, 2005.

Take notice that, on August 31, 2005, SCG Pipeline, Inc. (SCG) submitted for filing its Penalty Revenue Report. SCG states that the purpose of this filing is to inform the Commission that SCG did not assess or collect any penalty

revenues in the year ending July 31, 2005.

SCG states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5050 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–205–011]

Southern Natural Gas Company; Notice of Nonconforming Tariff Filing

September 8, 2005.

Take notice that on August 31, 2005, Southern Natural Gas Company (Southern) tendered for filing nonconforming FT Agreements and Third Revised Sheet No. 23I.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5066 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–390–001]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

September 8, 2005.

Take notice that on August 31, 2005, Southern Natural Gas Company (Southern) tendered for filing the following tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1:

Substitute Tenth Revised Sheet No. 212H
Fourth Revised Sheet No. 124A
Fourth Revised Sheet No. 254
Third Revised Sheet No. 255

Southern has requested that these sheets be made effective September 1, 2005.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5072 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–525–002]

Tennessee Gas Pipeline Company; Notice of Interruptible Transportation GSR Stipulation and Agreement Reconciliation Report

September 8, 2005.

Take notice that on August 26, 2005, Tennessee Gas Pipeline Company (Tennessee) in accordance with Article VI, Section D of the February 28, 1997 GSR Stipulation and Agreement (GSR Settlement) tendered for filing with the Federal Energy Regulatory Commission its GSR Interruptible Customers Reconciliation Report (Reconciliation Report).

The GSR Settlement requires Tennessee to file a Reconciliation Report with supporting documentation within ninety days of the conclusion of the GSR Interruptible Settlement Unit Cost Component Recovery Period to reconcile actual revenues from the GSR Interruptible Surcharge with the Interruptible Customers' share of the Restructuring Costs. The GSR Interruptible Settlement Unit Cost Component Recovery Period ended in the production of June 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant and all parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5037 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP05–452–001 and RM96–1–026]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

September 8, 2005.

Take notice that, on August 26, 2005, Tennessee Gas Pipeline Company (Tennessee) submitted a compliance filing pursuant to the Federal Energy Regulatory Commission's Letter Order issued August 12, 2005, in Docket Nos. RM96–1–026 and RP05–452–001.

Tennessee states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5078 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–408–000]

Texas Eastern Transmission, LP; Notice of Application

September 8, 2005.

Take notice that on September 1, 2005, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP05–408–000, an application pursuant to section 7 of the Natural Gas Act and Part 157 of the regulations of the Federal Energy Regulatory Commission, for an order authorizing Texas Eastern to lease 103,500 dekatherms per day (Dth/d) of capacity on the East Texas Access Area (ETX) Zone of Texas Eastern's interstate natural gas transmission system between the Primary Point of Receipt near Beckville, Texas, and the Primary Point of Delivery near Sharon, Louisiana, to Texas Gas Transmission, LLC. Texas Eastern also expedited treatment of the Application by issuing an order no later than October 6, 2005, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application may be directed to, Steven E. Tillman, General Manager, Regulatory Affairs, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251–1642 by Telephone: (713) 627–5113 or Facsimile: (713) 627–5947.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party

to the proceedings for this project should, before the comment date of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Comment Date: September 19, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5064 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–617–000]

Texas Gas Transmission, LLC; Notice of Proposed Changes in FERC Gas Tariff

September 8, 2005.

Take notice that on August 31, 2005, Texas Gas Transmission, LLC (Texas Gas) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet, to become effective November 1, 2005:

First Revised Third Revised Sheet No. 36

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any *FERC Online service*, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5049 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–407–000]

Texas Gas Transmission, LLC; Notice of Application

September 8, 2005.

Take notice that on September 1, 2005, Texas Gas Transmission, LLC (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky, 42301, filed, in CP05–407–000, an abbreviated application pursuant to section 7(c) of the Natural Gas Act (NGA), and part 157 of the Federal Energy Regulatory Commission's Rules and Regulations, for an order authorizing Texas Gas to lease 103,500 dekatherms per day (Dth/d) of capacity from Texas Eastern Transmission, LP, (Texas Eastern) on the East Texas Access Area (ETX) Zone of Texas Eastern's interstate natural gas transmission system between the Primary Point of Receipt near Beckville, Texas, and the Primary Point of Delivery near Sharon, Louisiana. Texas Gas Eastern also expedited treatment of the application by issuing an order no later than October 6, 2005, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application may be directed to Kathy D. Fort, Manager of Certificates and Tariffs, Texas Gas Transmission, LLC, P.O. Box 20008, Owensboro, Kentucky 42304, (270) 688–6825.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, before the comment date of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies

of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: September 19, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5082 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–428–001]

Total Peaking Services, L.L.C.; Notice of Compliance Filing

September 8, 2005.

Take notice that on September 1, 2005, Total Peaking Services, L.L.C. (TPS), tendered for filing revised tariff sheets for inclusion in TPS's FERC Gas Tariff, Original Volume No. 1. TPS requests that these revised tariff sheets be made effective September 1, 2005.

Fourth Revised Sheet No. 81
Second Revised Sheet No. 85
Third Revised Sheet No. 97
Fourth Revised Sheet No. 98

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5073 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–603–000]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

September 8, 2005.

Take notice that, on August 31, 2005, Transcontinental Gas Pipe Line Corporation (Transco) submitted a report of refund. Transco states that the refund report is for the annual period May 1, 2004 through April 30, 2005.

Transco states that copies of the filing were served on affected parties and state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 15, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5044 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–605–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 8, 2005.

Take notice that on August 31, 2005, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Eighth Revised Sheet No. 40Z, to become effective October 1, 2005.

Transco states that copies of the filing are being mailed to its affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the

Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5046 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–369–001]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 8, 2005.

Take notice that on August 29, 2005, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 33B, to become effective August 28, 2005.

Transco states that copies of the filing are being mailed to its customers and interested State commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant and all parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5070 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–623–000]

Transwestern Pipeline Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

September 8, 2005.

Take notice that on August 31, 2005, Transwestern Pipeline Company, LLC (Transwestern) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet, to become effective October 1, 2005:

First Revised Sheet No. 5B.03

Transwestern states that the purpose of this filing is to remove, effective October 1, 2005, the TCR II No. 1 cost component from the TCR II Reservation Surcharges established in Docket No. RP04–611–000.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5051 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–604–000]

Williston Basin Interstate Pipeline Company; Notice of Changes in FERC Gas Tariff

September 8, 2005.

Take notice that on August 31, 2005, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for

filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2 the following tariff sheets to become effective October 1, 2005.

Second Revised Volume No. 1

Sixty-First Revised Sheet No. 15
Thirty-Fifth Revised Sheet No. 15A
Fifty-Ninth Revised Sheet No. 18
Thirty-Fifth Revised Sheet No. 18A
Thirty-Fifth Revised Sheet No. 19
Thirty-Fifth Revised Sheet No. 20

Original Volume No. 2

105th Revised Sheet No. 11B

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5045 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–323–006]

Williston Basin Interstate Pipeline Company; Notice of Filing

September 8, 2005.

Take notice that on August 31, 2005, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing a revised negotiated Rate Schedule FT–1 Service Agreement. The proposed effective date of the service agreement is September 1, 2005.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5067 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–312–002]

Young Gas Storage Company, Ltd; Notice of Compliance Filing

September 8, 2005.

Take notice that, on September 1, 2005, Young Gas Storage Company, Ltd (Young) submitted a compliance filing pursuant to the Commission's order issued June 23, 2004 in Docket No. RP04–312–000.

Young states that revised tariff sheets are being filed to comply with the order issued in this proceeding to address operational purchases and sales.

Young states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5068 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 13, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER02–485–006.
Applicants: Ameren Services Company.
Description: Compliance Refund Report of Ameren Services Company for and on behalf of Union Electric Company d/b/a AmerenUE, Central Illinois Public Service Company d/b/a AmerenCIPS and Illinois Power Company d/b/a AmerenIP.
Filed Date: 09/01/2005.
Accession Number: 20050901–5052.
Comment Date: 5 p.m. Eastern Time on Thursday, September 22, 2005.

Docket Numbers: ER05–1297–001.
Applicants: Cleco Power LLC.
Description: Cleco Power LLC submits an amendment to its 8/5/05 filing of pro forma revisions to Attachment K, Substitute Second Revised Sheet to FERC Electric Tariff, Second Revised Vol 1 in compliance with Order 2003–C.
Filed Date: 09/01/2005.
Accession Number: 20050908–0108.
Comment Date: 5 p.m. Eastern Time on Thursday, September 22, 2005.

Docket Numbers: ER05–1392–001.
Applicants: Duquesne Light Company.
Description: Duquesne Light Company amends the notice of cancellation to terminate the Open Access Transmission Tariff effective 1/1/05.
Filed Date: 09/01/2005.
Accession Number: 20050908–0109.
Comment Date: 5 p.m. Eastern Time on Thursday, September 22, 2005.

Docket Numbers: ER05–1422–000.
Applicants: Calpine Merchant Services Company, Inc.
Description: Calpine Merchant Services Co, Inc submits Notice of Succession that as a result of a name change, it adopts the CES Marketing VII, LLC, FERC Electric Tariff 1 as its own.
Filed Date: 09/01/2005.
Accession Number: 20050907–0048.
Comment Date: 5 p.m. Eastern Time on Thursday, September 22, 2005.

Docket Numbers: ER05–1423–000.
Applicants: Midwest Independent Transmission System Operator.
Description: Midwest Independent Transmission System Operator, Inc submits Attachment W-Form of Market Participating Agreement, Non-Firm Point-to-Point Transmission Service Agreement on behalf of Green Mountain Energy Company.
Filed Date: 09/01/2005.
Accession Number: 20050907–0049.
Comment Date: 5 p.m. Eastern Time on Thursday, September 22, 2005.

Docket Numbers: ER05–1424–000.
Applicants: New England Power Pool.
Description: New England Power Pool Participants Committee submits Second Restated NEPOOL Agreement executed by Kennebec River Energy, LLC *et al.*
Filed Date: 09/01/2005.
Accession Number: 20050907–0050.
Comment Date: 5 p.m. Eastern Time on Thursday, September 22, 2005.

Docket Numbers: ER05–1434–000.
Applicants: Vesta Capital Partners LP.
Description: Vesta Capital Partners, LP submits a Notice of Succession to notify that as a result of a name change, it adopts the Choice Energy Services, LP's Rate Schedule FERC 1 as its own.
Filed Date: 09/01/2005.
Accession Number: 20050907–0056.
Comment Date: 5 p.m. Eastern Time on Thursday, September 22, 2005.

Docket Numbers: ER05–1435–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc, submits the Midwest ISO Agreement which has been executed by Ameren Services Co *et al.*
Filed Date: 09/01/2005.
Accession Number: 20050908–0112.
Comment Date: 5 p.m. Eastern Time on Thursday, September 22, 2005.

Docket Numbers: ER05–1436–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc *et al.* submits a notice of cancellation of certain agreements related to GridAmerica LLC to be effective 11/1/05.
Filed Date: 09/01/2005.
Accession Number: 20050908–0111.
Comment Date: 5 p.m. Eastern Time on Thursday, September 22, 2005.

Docket Numbers: ER05–1437–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc proposes changes to its Market Administration and Control Area Services Tariff, to eliminate the sunset dates for its Day-Ahead Demand Response Program and its Emergency Demand Response Program.
Filed Date: 09/01/2005.
Accession Number: 20050908–0113.
Comment Date: 5 p.m. Eastern Time on Thursday, September 22, 2005.

Docket Numbers: ER05–1438–000.
Applicants: Boston Edison Company.
Description: Boston Edison Co submits an executed Wholesale Distribution Service Agreement with Massachusetts Port Authority.
Filed Date: 09/01/2005.
Accession Number: 20050908–0114.
Comment Date: 5 p.m. Eastern Time on Thursday, September 22, 2005.

Docket Numbers: ER05–1449–000.
Applicants: North West Rural Electric Cooperative.
Description: North West Rural Electric Coop advises that due to amendments to section 201(f) of the Federal Power Act, it is no longer a public utility and that Rate Schedule 1 is no longer subject to jurisdiction of FERC.
Filed Date: 09/01/2005.
Accession Number: 20050909–0034.
Comment Date: 5 p.m. Eastern Time on Thursday, September 22, 2005.

Docket Numbers: ER99–2923–004.
Applicants: Phelps Dodge Energy Services, LLC.
Description: Phelps Dodge Energy Services, LLC submits a revised tariff sheet that corrects a typographical error in the Market Behavior rules.
Filed Date: 09/01/2005.
Accession Number: 20050908–0110.
Comment Date: 5 p.m. Eastern Time on Thursday, September 22, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling

link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5091 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

September 13, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: *ER05–1281–001.*

Applicants: FPL Energy Duane Arnold, LLC.

Description: *FPL Energy Duane Arnold LLC amends its application to remove the provisions in its FERC Electric, Original Volume No. 1 reflecting authority to make sales of ancillary services at market-based rates and correct typographical error.*

Filed Date: 09/02/2005.

Accession Number: *20050909–0030.*

Comment Date: 5 p.m. eastern time on Monday, September 19, 2005.

Docket Numbers: *ER05–1343–001.*

Applicants: ISO New England Inc.

Description: *ISO New England, Inc submits for the quarter ending 6/30/05 its Revised Capital Projects Report.*

Filed Date: 09/02/2005.

Accession Number: *20050909–0031.*

Comment Date: 5 p.m. eastern time on Friday, September 23, 2005.

Docket Numbers: *ER05–1379–001.*

Applicants: American Electric Power Services Corporation.

Description: *Appalachian Power Co submits an amendment to its 8/22/05 filing involving an Interconnection & Local Delivery Service Agreement with Old Dominion Electric Cooperative.*

Filed Date: 09/02/2005.

Accession Number: *20050907–0055.*

Comment Date: 5 p.m. eastern time on Friday, September 23, 2005.

Docket Numbers: *ER05–1425–000.*

Applicants: Puget Sound Energy, Inc.

Description: *Puget Sound Energy, Inc requests that FERC disclaim jurisdiction over certain contracts with the Public Utility District 2 of Grant County, WA. September 8, 2005 errata to this filing included under accession No. 20050908–5049.*

Filed Date: 09/02/2005.

Accession Number: *20050907–0061.*

Comment Date: 5 p.m. eastern time on Friday, September 23, 2005.

Docket Numbers: *ER05–1427–000.*

Applicants: Portland General Electric Company.

Description: *Portland General Electric Co requests that FERC disclaim jurisdiction over certain contracts with the Public Utility District 2 of Grant County, Washington.*

Filed Date: 09/02/2005.

Accession Number: *20050907–0062.*

Comment Date: 5 p.m. eastern time on Friday, September 23, 2005.

Docket Numbers: *ER05–1428–000.*

Applicants: Brookhaven Energy Limited Partnership.

Description: *Brookhaven Energy Limited Partnership submits Notice of Cancellation of Market-based rate Authority under FERC Electric Tariff, Original Volume No.1, effective 9/30/2005.*

Filed Date: 09/02/2005.

Accession Number: *20050907–0053.*

Comment Date: 5 p.m. eastern time on Friday, September 23, 2005.

Docket Numbers: *ER05–1429–000.*

Applicants: Allegheny Energy Supply Wheatland Generating Facility, LLC.

Description: *Allegheny Energy Supply Wheatland Generating Facility, LLC submits a Notice of Cancellation of FERC Electric Tariff, First Revised Volume 1, effective 9/3/05.*

Filed Date: 09/02/2005.

Accession Number: *20050907–0052.*

Comment Date: 5 p.m. eastern time on Friday, September 23, 2005.

Docket Numbers: *ER05–1430–000.*

Applicants: Valley Electric Association, Inc.

Description: *Valley Electric Association, Inc advises that due to amendments to section 201(f) of the Federal Power Act, it is no longer a public utility, and submits notices of cancellation to withdraw its filed rate schedules, open access transmission tariff and service agreement.*

Filed Date: 09/02/2005.

Accession Number: *20050907–0051.*

Comment Date: 5 p.m. eastern time on Friday, September 23, 2005.

Docket Numbers: *ER05–1431–000.*

Applicants: Southern California Edison Company.

Description: *Southern California Edison Co submits the Grand Crossing E Street Wholesale Distribution Load Interconnection Facilities Agreement with the City of Industry, CA.*

Filed Date: 09/02/2005.

Accession Number: *20050907–0057.*

Comment Date: 5 p.m. eastern time on Friday, September 23, 2005.

Docket Numbers: *ER05–1432–000.*

Applicants: Entergy Services, Inc.

Description: *Entergy Services Inc on behalf of Entergy Operating Companies submits revisions to its Schedule 2 (Reactive Supply and Voltage Control Services from Generation Sources) contained in its OATT.*

Filed Date: 09/02/2005.

Accession Number: *20050907–0059.*

Comment Date: 5 p.m. eastern time on Friday, September 23, 2005.

Docket Numbers: *ER05–1433–000.*

Applicants: New York Independent System Operator, Inc.

Description: *New York Independent System Operator submits revisions to its Open Access Transmission Tariff and its Market Administration and Control Area Services Tariff.*

Filed Date: 09/02/2005.

Accession Number: *20050907–0058.*

Comment Date: 5 p.m. eastern time on Friday, September 23, 2005.

Docket Numbers: *ER05–1439–000.*

Applicants: Allegheny Energy Supply Company, LLC.

Description: *Allegheny Energy Supply Co, LLC submits a petition requesting authorization to make wholesale power sales to its affilitate, West Penn Power Co dba Allegheny Power.*

Filed Date: 09/02/2005.

Accession Number: *20050908–0150.*

Comment Date: 5 p.m. eastern time on Friday, September 23, 2005.

Docket Numbers: *ER05–1440–000.*

Applicants: MidAmerican Energy Company.

Description: *MidAmerican Energy Co submits a Notice of Cancellation of Full Requirements Power Agreement dated 11/15/87 with the City of Pocahontas, Iowa.*

Filed Date: 09/02/2005.

Accession Number: *20050908–0116.*

Comment Date: 5 p.m. eastern time on Friday, September 23, 2005.

Docket Numbers: *ER05–1441–000.*

Applicants: Great Plains Power Incorporated.

Description: *Great Plains Power, Incorporated submits a notice of withdrawal of market-based rate authorization.*

Filed Date: 09/02/2005.

Accession Number: *20050908–0115.*

Comment Date: 5 p.m. eastern time on Friday, September 23, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Magalie R. Salas,

Secretary.

[FR Doc. E5–5092 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1656–000 and ER02–1656–026]

California Independent System Operator Corporation; Supplemental Notice of Technical Conference

September 9, 2005.

As previously noticed, in accordance with the directive of the July 1, 2005 Order on Further Amendments to the California Independent System Operator's Comprehensive Market Redesign Proposal,[1] Federal Energy Regulatory Commission (Commission) staff will convene a technical conference to explore tariff issues related to demand response options, including special case nodal pricing and the establishment of zones for wholesale customers.[2]

The conference will be open to the general public, but priority to participate will be given to parties in the above-captioned docket. The technical conference will be held in San Francisco, California, on Tuesday, September 13, 2005, at 9:00 a.m. (PST) at the Renaissance Parc 55 Hotel, 55 Cyril Magnin Street, San Francisco, California 94102; (415) 392–8000.

For further information, contact *Heidi.Werntz@FERC.gov*; (202) 502–8910.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5058 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

[1] California Independent System Operator, Inc., 112 FERC ¶ 61,013 at P 39 (2005).

[2] *See id.* at P 37 (''[E]ach wholesale customer should have the option of establishing, as a separate zone, the set of nodes where it receives energy).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1656–000 and ER02–1656–026]

California Independent System Operator Corporation; Supplemental Notice of Technical Conference

September 8, 2005.

As previously announced, the Federal Energy Regulatory Commission (FERC) staff will convene a technical conference to explore tariff issues related to demand response, including special case nodal pricing (SCNP) and the establishment of Load Aggregation Point (LAP) zones for wholesale customers.[1] This conference will be held in San Francisco, California, on Tuesday, September 13, 2005, at 9 a.m. (P.d.t.) at the Renaissance Parc 55 Hotel, 55 Cyril Magnin Street, San Francisco, California 94012; (415) 392–8000. Attached is the agenda for this conference.[2]

FOR FURTHER INFORMATION CONTACT: *Heidi.Werntz@FERC.gov;* (202) 502–8910.

Magalie R. Salas,

Secretary.

Attachment

Technical Conference Agenda

Renaissance Parc 55 Hotel, 55 Cyril Magnin Street, San Francisco, California 94102, (425) 392–8000.

September 13, 2005.

I. *Introductions and Opening Remarks*

II. *Special Case Nodal Pricing (SCNP):* Overview of the issue by FERC staff. California Department of Water Resources State Water Project presents its SCNP proposal. California Public Utilities Commission (CPUC) discussion on how SCNP would fit in with the state's overall energy policy. Discussion by California Independent System Operator (CAISO) of implementation issues. Open discussion of issues.

Participants should be prepared to discuss the following topics:

- The pros and cons of SCNP for California;
- Who would be eligible for SCNP;
- How many megawatts would potentially be involved;
- How much would SCNP cost and who would be affected;
- What software changes would be required to implement SCNP;

[1] *See* Notice of Technical Conference, Docket Nos. ER02–1652–000 and ER02–1652–026 (August 22, 2005).

[2] This technical conference pertains to matters discussed in California Independent System Operator Corp., 112 FERC ¶ 61,013 at P 37 and 39 (2005) (July 1 Order).

• What impediments exist to implementing SCNP, and how long would it take to implement it;

• What impact SCNP would have on other current demand response programs.

III. *Establishment of LAP Zones for Wholesale Customers:* Discussion of issues and potential impacts of allowing individual wholesale customers to establish their own LAP zones.[3]

IV. *Demand Response and the CAISO Tariff:* Overview of California's demand response policies and programs by the State agencies. Participants will have the opportunity to discuss, among other things:

• How successful demand response has been this summer;

• How demand response fits into CAISO's current and MRTU tariff;

• What is/is not working with respect to demand response;

• The role of the CAISO in procuring demand response;

• The coordination among all players in demand response.

[FR Doc. E5–5065 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–422–000]

El Paso Natural Gas Company; Technical Conference Agenda

September 9, 2005.

On July 29, 2005, the Commission issued an order in this proceeding[1] that directed Staff to convene a technical conference to discuss issues raised by El Paso's tariff filing. On August 11, 2005, a notice was issued scheduling the technical conference for Tuesday, September 20, 2005 and continuing through Wednesday, September 21, 2005. The August 11, 2005 notice stated that an agenda for the conference would be issued in a subsequent notice. The agenda attached to this notice lists the issues for discussion in the order in which they will be addressed at the two-day technical conference. The conference on Tuesday, September 20, 2005 will start at 10 a.m. (EST) and end by 5 p.m. and continue on Wednesday, September 21, 2005 at 9 a.m.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5060 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

[3] July 1 Order, 112 FERC ¶ 61,013 at P 37.

[1] 112 FERC ¶ 61,150 (2005).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD05–14–000]

State of the Natural Gas Infrastructure Conference; Notice of Public Conference

September 9, 2005.

Take notice that a public conference will be held on October 12, 2005, from approximately 9 a.m. until 3 p.m. Eastern Time, in the Commission Meeting Room on the second floor of the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. All interested persons may attend; there is no fee or registration. Commissioners are expected to participate.

The conference will focus on issues related to the development of natural gas pipeline infrastructure. Discussion will include changes in the industry that impact infrastructure development, regulatory impediments, financial risks involved, and suggestions for regulatory improvements. The Commission also is interested in hearing about the state of Gulf Coast facilities following Hurricane Katrina, and what steps may need to be taken to restore or upgrade pipeline infrastructure in that region.

The Commission is now soliciting nominations for speakers at the conference. Persons wishing to nominate themselves as speakers should do so using this electronic link: *https://www.ferc.gov/whats-new/registration/speaker-1012-form.asp.* Such nominations must be made by close of business, Friday, September 16, 2005, to enable staff to develop an agenda.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, by phone, or via satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on ''FERC.''

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

Additional details and the agenda for this conference will be included in a subsequent notice.

For more information about the conference, please contact John Schnagl at (202) 502–8756 (*john.schnagl@ferc.gov*) or Sarah McKinley at (202) 502–8004 (*sarah.mckinley@ferc.gov*).

Magalie R. Salas,

Secretary.

[FR Doc. E5–5062 Filed 9–15–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[R04–OAR–2005–TN–00006–200525; FRL–7970–1]

Adequacy Status of the Nashville 1-Hour Ozone Maintenance Plan Update for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found that the motor vehicle emissions budgets (MVEBs) submitted in the Nashville (Middle Tennessee) 1-hour ozone maintenance plan update, dated August 10, 2005, by the Tennessee Department of Environment and Conservation (TDEC), are adequate for transportation conformity purposes. On March 2, 1999, the DC Circuit Court ruled that MVEBs submitted in state implementation plans (SIPs) cannot be used for transportation conformity determinations until EPA has affirmatively found them adequate. As a result of EPA's finding, the Nashville area can use the MVEBs from the submitted Nashville 1-hour ozone maintenance plan update for future conformity determinations.

DATES: These MVEBs are effective October 3, 2005.

FOR FURTHER INFORMATION CONTACT: Amanetta Wood, Environmental Scientist, U.S. Environmental Protection Agency, Region 4, Air Planning Branch, Air Quality Modeling and Transportation Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303. Ms. Wood can also be reached by telephone at (404) 562–9025, or via electronic mail

at *wood.amanetta@epa.gov*. The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/transp.htm* (once there, click on the ''Transportation Conformity'' text icon, then look for ''Adequacy Review of SIP Submissions'').

SUPPLEMENTARY INFORMATION:

Background

Today's notice is simply an announcement of a finding that EPA has already made. EPA Region 4 sent a letter to TDEC on August 16, 2005, stating that the MVEBs submitted in the Nashville 1-hour ozone maintenance plan update dated August 10, 2005, are adequate. EPA's adequacy comment period ran from June 9 through July 11, 2005. This finding has also been announced on EPA's conformity Web site: *http://www.epa.gov/otaq/transp.htm*, (once there, click ''Transportation Conformity'' text icon, then look for ''Adequacy Review of SIP Submissions''). The adequate MVEBs are provided in the following table:

NASHVILLE AREA MVEBS

[Tons per day]

	2016
VOC	21.93
NO_X	45.76

Transportation conformity is required by section 176 (c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which EPA determines whether a SIP's MVEBs are adequate for transportation conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's SIP submittal completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if EPA finds the MVEBs adequate, the Agency may later determine that the SIP itself is not approvable.

EPA has described the process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memorandum entitled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''). EPA has followed this guidance in making this adequacy determination. This guidance is incorporated into EPA's July 1, 2004, final rulemaking entitled ''Transportation Conformity Rule Amendments for the New 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes'' (69 FR 40004).

Dated: September 1, 2005.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 05–18424 Filed 9–15–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6667–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 1, 2005 (70 FR 16815).

Draft EISs

EIS No. 20050202, ERP No. D-CGD-A03086–00, Programmatic—Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions, To Increase the Oil Removal Capability, U.S. Exclusive Economic Zone (EEZ), United States, Alaska, Guam, Puerto Rico and other U.S. Territories.

Summary: EPA expressed concerns related to the synergistic effects of chemical dispersants with oil on water quality and organisms within the water column, spill modeling, and model limitations for the fate and effect of chemically dispersed oil.

Rating EC2

EIS No. 20050235, ERP No. D–NPS–F65057–IN, Lincoln Boyhood National Memorial General Management Plan, Implementation, Lincoln City, Spencer County, IN.

Summary: EPA has no objections to the proposed action.

Rating LO

EIS No. 20050266, ERP No. D–DOE–A00171–00, Proposed Consolidation of Nuclear Operations Related to Production of radioisotope Power Systems, Located or Planned Sites: Oak Ridge National Laboratory (ORNL), Tennessee; Los Alamos National Laboratory (LANL), New Mexico; and the Idaho National Laboratory (INL), Idaho, TN, NM, ID.

Summary: EPA has no objections to the proposed action.

Rating LO

EIS No. 20050310, ERP No. D–JUS–G81013–TX, Laredo Detention Facility, Proposed Contractor-Owned/Contractor-Operated Detention Facility, Implementation, Webb County, TX.

Summary: EPA has no objections to the proposed action.

Rating LO

EIS No. 20050300, ERP No. DS–NOA–E55555–00, Reef Fish (Amendment 25) and Coastal Migratory Pelagic (Amendment 17) for Extending the Charter Vessel/Headboat Permit Moratorium, Gulf of Mexico and South Atlantic.

Summary: EPA agrees with the extension of the permit moratorium, but recommended that any available moratorium data be evaluated and summarized in the FSEIS as part of the decision-making process.

Rating LO

Final EISs

EIS No. 20050270, ERP No. F–NRC–E06024–AL, Generic—License Renewal of Nuclear Plants for Browns Ferry, Unit 1, 2 and 33 (TAC Nos. MC7168, MC1769, and MC1770), Supplement 21 to NUREG–1437, Implementation, Athens, AL.

Summary: EPA expressed environmental concerns because of the uncertainty of the ultimate location of a permitted repository site for the radioactive waste.

EIS No. 20050317, ERP No. F–NAS–E12007–FL, New Horizons Mission to Pluto, Continued Preparations and Implementation to Explore Pluto and Potentially the Recently Discovered Kuiper Belt, Cape Canaveral Air Force Station, FL.

Summary: EPA's previous issues have been resolved therefore, EPA has no objection to the proposed action.

EIS No. 20050334, ERP No. F–DOE–J91000–MT, South Fork Flathead Watershed Westslope Cutthroat Trout Conservation Program, Preserve the

Genetic Purity of the Westslope Cutthroat Trout Population, Flathead National Forest, Flathead River, Flathead, Powell and Missoula Counties, MT.

Summary: EPA expressed environmental concerns about potential impacts to aquatic ecosystem integrity, particularly effects to non-target species, and ecological impacts of restocking historically fishless lakes. EPA emphasizes the need to follow strict pesticide application protocols with appropriate management and mitigation measures, and establishment of a comprehensive monitoring and adaptive management program to minimize ecological and public health risks during project implementation.

EIS No. 20050335, ERP No. FS–AFS–J65419–MT, Gallatin National Forest, Updated Information, Replaces the Effects Analysis for the Northern Goshawk in the Main Boulder Fuels Reduction Project (FEIS), Implementation, Gallatin National Forest, Big Timber Ranger District, Sweetgrass and Park Counties, MT.

Summary: EPA has no objections to the proposed action and supports the proposed ecological effects monitoring.

Dated: September 13, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–18428 Filed 9–15–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6667–4]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 09/06/2005 Through 09/09/2005.

Pursuant to 40 CFR 1506.9.

EIS No. 20050372, Final EIS, AFS, AZ, Pickett Lake and Padre Canyon Allotments Cattle Grazing Management, Authorization and Implementation, Coconino National Forest, Mormon Lake Ranger District, Coconino County, AZ, Wait Period Ends: 10/17/2005, Contact: Katherine Sanchez Meador 928–526–0866.

EIS No. 20050373, Final EIS, COE, MO, Howard Bend Floodplain Area Study, Improvements for Future Land, Future Road, and Stormwater Management, Missouri River Flood Developments, U.S. Army COE Section 10 and 404 Permits, St. Louis County, MO, Wait Period Ends: 10/17/2005, Contact: Danny McClendon 314–331–8574.

EIS No. 20050374, Draft EIS, BLM, CA, Ukiah Resource Management Plan, Implementation, Several Counties, CA, Comment Period Ends: 12/15/2005, Contact: Eli Ilano 916–978–4427.

EIS No. 20050375, Draft Supplement, FHW, TN, TN–397 (Mack Hatcher Parkway Extension) Construction from US–31 (TN–6, Columbia Avenue) South of Franklin to US–341 (TN–106, Hillsboro Road) North of Franklin, Additional Information on the Build Alternative (Alternative G), Williamson County and City of Franklin, TN , Comment Period Ends: 10/31/2005, Contact: Walter Boyd 615–781–5774.

EIS No. 20050376, Final EIS, COE, TX, Cedar Bayou Navigation Chanel (CBNC.) Improvement Project, Implementation, Near Baytown in Harris and Chambers Counties, TX, Wait Period Ends: 10/17/2005, Contact: Dr. Terry Roberts 409–766–3035.

EIS No. 20050377, Draft EIS, COE, NY, Montuak Point Storm Damage Reduction Project, Proposed Reinforcement of an Existing Stone Revetment Wall, Suffolk County, NY, Comment Period Ends: 10/31/2005 Contact: Dr. Christopher Ricciardi 917–790–8630.

EIS No. 20050378, Draft EIS, COE, NJ, Liberty State Park Ecosystem Restoration Project, Hudson Raritan Estuary Study, To Address the Adverse Impacts Associated with Past Filling Activities, Port Authority of New York and New Jersey, Jersey City, Hudson County, NJ , Comment Period Ends: 10/24/2005, Contact: Robert Will 917–790–8635. Revision to FR Notice Published on 9/16/2005: Due to an Administrative Error by the U.S. Army COE the above Draft EIS was not properly filed with the U.S. EPA. COE has confirmed that distribution of the Draft EIS was made available to all Federal Agencies and interested parties for the 45-day review period that will end on 10/24/2005.

Amended Notices

EIS No. 20050291, Final EIS, AFS, CO, Gold Camp Road Plan, Develop a Feasible Plan to Manage the Operation of Tunnel #3 and the 8.5 mile Road Segment, Pike National Forest, Pikes Peak Ranger District, Colorado Springs, El Paso County, CO, Wait Period Ends: 11/07/2005, Contact: Frank Landis 719–477–4203. Revision to FR Notice Published on 7/22/2005. Refiling of Final EIS Per Agencies Request, the Wait Period will End on 11/07/2005.

EIS No. 20050292, Draft EIS, USA, HI, Makua Military Reservation (MMR) Project, Proposed Military Training Activities, 25th Infantry Division (Light) and U.S. Army, HI, Comment Period Ends: 10/06/2005, Contact: Gary Shirakata 808–438–0772. Revision to FR Notice Published on 7/22/2005. Extending the Comment Period from 9/21/2005 to 10/06/2005.

EIS No. 20050298, Draft EIS, AFS, UT, West Bear Vegetation Management Project, Timber Harvesting, Prescribed Burning, Roads Construction, Township 1 North, Range 9 East, Salt Lake Principle Meridian, Evanston Ranger District, Wasatch-Cache National Forest, Summit County, UT, Comment Period Ends: 09/30/2005, Contact: Larry Johnson 307–789–3194. Revision of FR Notice Published on 7/22/2005. Extending the Comment Period from 9/06/2005 to 9/30/2005.

EIS No. 20050351, Draft EIS, SFW, CA, East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan, Implementation, Incidental Take Permit, Cities of Brentwood, Clayton, Oakley and Pittsburg, Contra Costa County, CA, Comment Period Ends: 12/01/2005, Contact: Sheila Larsen 916–444–6600. Revision to FR Notice Published on 9/2/2005. Comment Period Extended from 10/17/2005 to 12/01/2005.

Dated: September 13, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–18429 Filed 9–15–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0001; FRL–7738–5]

National Pollution Prevention and Toxics Advisory Committee (NPPTAC); Interim Ad Hoc Nanotechnology Work Group; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act (FACA), 5 U.S. App. 2 (Public Law 92–463), EPA gives notice of an all day meeting of the National

Pollution Prevention and Toxics Advisory Committee (NPPTAC) Interim Ad Hoc Nanotechnology Work Group. The purpose of the meeting is to discuss issues regarding a potential voluntary pilot program for nanoscale materials that are existing chemical substances and consideration of relevant issues related to nanoscale materials under the Toxics Substances Control Act (TSCA).

DATES: The meeting will be held on September 29, 2005, from 8 a.m. to 5 p.m.

Registration to attend the meeting identified by docket ID number OPPT–2002–0001, must be received on or before September 22, 2005. Registration will also be accepted at the meeting.

Request to provide oral comments at the meeting, identified as (NPPTAC) Interim Ad Hoc Nanotechnology Work Group September 2005 meeting, must be received in writing on or before September 22, 2005.

Requests to participate in the meeting, identified by docket identification (ID) number OPPT–2002–0001, must be received on or before September 22, 2005.

ADDRESSES: The meeting will be held at the Holiday Inn, Rosslyn at Key Bridge, 1900 North Myer Drive, Arlington, VA. 22209.

Requests to participate in the meeting may be submitted to the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: *For general information contact:*

Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address:*TSCA-Hotline@epa.gov*.

For technical information contact: John Alter (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9891; e-mail address: *npptac.oppt@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who have an interest in or may be required to manage pollution prevention and toxic chemical programs, individual groups concerned with environmental justice, children's health, or animal welfare, as they relate to OPPT's programs under the Toxic Substances Control Act (TSCA) and the Pollution Prevention Act (PPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in the activities of the NPPTAC. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPPT–2002–0001. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744, and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search'' then key in the appropriate docket ID number.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number OPPT–2002–0001, (NPPTAC) Interim Ad Hoc Nanotechnology Work Group September 2005 meeting in the subject line on the first page of your comment.

1. *By mail:* OPPT Document Control Office, Environmental Protection Agency, 7407M, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

2. *Electronically:* At *http://www.epa.gov/edocket/,* search for OPPT–2002–0001, and follow the directions to submit comments.

3. *Hand delivery/courier:* OPPT Document Control Office in EPA East Bldg., Rm. M6428, 1201 Constitution Ave., NW., Washington, DC.

II. Background

The purpose and scope of work for the NPPTAC's Interim Ad Hoc Nanotechnology Work Group is stated in EPA's request to the NPPTAC, which was approved and adopted by the Committee on June 30, 2005. Accordingly, the Work Group is to provide input to the NPPTAC for Committee consideration at its October 2005 meeting for potential forwarding to EPA on the following:

- Options for possible elements of EPA's voluntary pilot program for existing chemical nanoscale materials.
- Approaches that may be appropriate for putting such a voluntary pilot program in place.
- Consideration of issues that may be relevant to the review of new chemical nanoscale materials under TSCA.
- Consideration of other relevant issues raised in stakeholder input provided at EPA's June 23, 2005, public meeting as well as written comments to the docket.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the technical person listed under **FOR FURTHER INFORMATION CONTACT**. Please note that registration will assist in planning adequate seating; however, members of the public can register the day of the meeting. Therefore all seating will be available on a first serve basis.

1. *To register to attend the meeting:* Pre-registration for the September 2005 (NPPTAC) Interim Ad Hoc Nanotechnology Work Group meeting and requests for special

accommodations may be made by visiting the NPPTAC web site at: *http://www.epa.gov/oppt/npptac/meetings.htm.* Registration will also be available at the meeting. Special accommodations may also be requested by calling (202) 564–9891 and leaving your name and telephone number.

2. *To request an opportunity to provide oral comments:* You must register first in order to request an opportunity to provide oral comments at the September 2005 (NPPTAC) Interim Ad Hoc Nanotechnology Work Group meeting. To register visit the NPPTAC web site at: *http://www.epa.gov/oppt/npptac/meetings.htm.* Request to provide oral comments at the meeting must be submitted in writing on or before September 22, 2005, with a registration form. Please note that time for oral comments may be limited to 3 to 5 minutes per speaker, depending on the number of requests received.

3. *Written comments.*You may submit written comments to the docket listed under Unit I.B. Written comments can be submitted at any time. If written comments are submitted on or before September 22, 2005, they will be provided to the (NPPTAC) Interim Ad Hoc Nanotechnology Work Group members prior to or at the meeting. If you provide written comments at the meeting, 35 copies will be needed.

Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number OPPT–2002–001, must be received on or before September 22, 2005.

List of Subjects

Environmental protection, NPPTAC, Pollution Prevention, Toxics, Toxic Chemicals, Chemical Health and Safety, Nanotechnology.

Dated: September 13, 2005.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 05–18580 Filed 9–14–05; 2:07 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7969–9]

Proposed CERCLA Administrative Agreement for Recovery of Past Response Costs; Lauli'i Cylinders Superfund Removal Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Action (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed Administrative Order on Consent (''AOC,'' Region 9 Docket No. 9–2005–0021) pursuant to section 122(h) of CERCLA concerning the Lauli'i Cylinders Removal Site (the ''Site''), located in Lauli'i, American Samoa. The respondent to the AOC is FCF Fisheries Co. LTD (''FCF''), which arranged for the disposal of hazardous substances at the Site for which EPA incurred response costs.

Through the proposed AOC, FCF will reimburse the United States $20,000 of its response costs, which total approximately $130,000. The AOC provides FCF with a covenant not to sue and contribution protection for the costs and the removal action at the Site.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed AOC. The Agency's response to any comments will be available for public inspection at EPA'S Region IX offices, located at 75 Hawthorne Street, San Francisco, California 94105.

DATES: Comments must be submitted on or before October 17, 2005.

ADDRESSES: The proposed Agreement may be obtained from Judith Winchell, Docket Clerk, telephone (415) 972–3124. Comments regarding the proposed Agreement should be addressed to Judith Winchell (SFD–7) at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105, and should reference the Lauli'i Cylinders Superfund Removal Site, Lauli'i, American Samoa, and USEPA Docket No. 9–2005–0021.

FOR FURTHER INFORMATION CONTACT: J. Andrew Helmlinger, Office of Regional Counsel, telephone (415) 972–3904, USEPA Region IX, 75 Hawthorne Street, San Francisco, California 94105.

Dated: September 2, 2005.

Keith A. Takata,

Director, Superfund Division.

[FR Doc. 05–18423 Filed 9–15–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7967–4]

Connecticut Marine Sanitation Device Standard; Receipt of Petition

Notice is hereby given that a petition has been received from the State of Connecticut requesting a determination by the Regional Administrator, U.S. Environmental Protection Agency, pursuant to Section 312(f)(3) of Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the area covered under this petition, which is:

Waterbody/general area	Latitude	Longitude
Hoadley Point in Guilford	41°15′22.88″ N	72°44′09.73″ W
Due South from Hoadley to the Boundary between CT and NY	41°07′51.17″ N	72°44′09.73″ W
Easterly boundary between CT and NY to a point due South of Eastern Point in Groton	41°15′54.55″ N	72°04′31.09″ W
Due North to Easter Point in Groton	41°19′08.94″ N	72°04′31.09″ W
CT and MA State boundary of the CT River	42°01′54.69″ N	72°36′31.02″ W
Navigable Rivers: Hammonasset, Menunketesuck, Niantic and the Thames.		

The area also includes the navigable reaches of the Hammonasset River, Menunketesuck River, Niantic River and the Thames River that drain into Long Island Sound, and the Connecticut River within State boundaries.

The coastal towns bordering the proposed No Discharge Area are: Guilford, Madison, Clinton, Westbrook, Old Saybrook, Old Lyme, East Lyme, Waterford, and New London. There are 26 inland towns which border the five rivers that are included in this proposed No Discharge Area designation.

The State of Connecticut has certified that there are 36 pumpout facilities located within the proposed area, and a list of the facilities, phone numbers,

locations, and hours of operation is appended at the end of this petition. There are 29 fixed shore-based facilities, four portable facilities, three pumpout boats, and ten dump stations. Three of the fixed shore facilities offer additional portable facilities. The majority of the pumpout facilities' wastes are collected in a holding tank and then properly disposed, by a licensed waste hauler to an off site facility. In Groton, Norwich, New London, Waterford, and East Lyme, pumpout facilities discharge directly to the town sewer systems.

In addition, there are approximately 107 marinas, docking areas, and boatyards within the proposed No Discharge Area, and the majority of these marine facilities have restrooms available for their patrons.

The State of Connecticut has provided documentation indicating that the total vessel population is estimated to be 7500 in the proposed area. Of these, approximately 7200 are identified as recreational, 300 are identified as commercial, and the transient vessel population is estimated to be 430, which is included in the total figure. It is estimated that 4,000 or 53% of the total vessel population may have a Marine Sanitation Device (MSD) of some type. These total numbers may be overestimated and conservative by the State of Connecticut, which would give the boating public a larger ratio of pumpouts to boats (300–600 vessels for every one facility.)

There are 36 wildlife management areas, two state parks, approximately 33 public beaches, and 19 boat ramps located within the proposed No Discharge Area. The area is used by both recreational and commercial shell fishermen for the harvest of hard clams, small populations of bay scallops, soft shell clams and blue mussels. In addition fishing is commonplace and the species found in the area include hickory shad, striped bass, bluefish, summer flounder, scup, weakfish and blackfish. The proposed area has a variety of rich natural habitats and supports a wide diversity of species. The federally listed species include the bald eagle, shortnose sturgeon, piping plover, and the puritan tiger beetle as well as dozens of state-rare and endangered species.

Comments and reviews regarding this request for action may be filed on or before October 31, 2005. Such communications, or requests for information or a copy of the applicant's petition, should be addressed to Ann Rodney, U.S. Environmental Protection Agency—New England Region, One Congress Street, Suite 1100, COP, Boston, MA 02114–2023. Telephone: (617) 918–1538.

LIST OF PUMPOUTS IN THE PROPOSED AREA

Name	Location	Contact information	Hours of operation (call ahead to verify)	Mean low water depth (feet)	Fee
The Guilford Yacht Club	West River, Guilford	VHF CH 71, 203–458–3048.	May 1–Nov 30, daily 8 a.m. to 5 p.m..	8	Free/$5 for non-members.
Cerino's Marina at Clinton Yacht Haven.	Hammonasset River, Clinton.	VHF CH 9, 72, 860–669–7716.	May 1–Nov 1, daily 9 a.m. to 5 p.m..	9	$5.
Riverside Basin Marina Inc.	Hammonasset River, Clinton.	VHF CH 9, 860–669–1503.	May 1–Oct 31, daily 7 a.m. to 5 p.m..	6	Free.
Cedar Island Marina	Clinton Harbor, Clinton ..	VHF CH 9, 68, 860–669–8681.	May 1–Oct 31, daily 8 a.m. to 5 p.m..	8	Free/$5 for non-members.
Brewer Pilot's Point Marina (North Yard).	Westbrook Harbor, Westbrook.	VHF CH 9, 860–399–5128.	July 1–Aug 31, daily 8 a.m. to 8 p.m..	8	Free/$5 for non-members.
Brewer Pilot's Point (East Yard).	Westbrook Harbor, Westbrook.	VHF CH 9, 860–399–8421.	July 1–Aug 31, daily 8 a.m. to 8 p.m..	7	Free/$5 for non-members.
Brewer Pilot's Point Marina (South Yard).	Westbrook Harbor, Westbrook.	VHF CH 9, 860–399–7806.	July 1–Aug 31, daily 8 a.m. to 8 p.m..	12	Free/$5 for non-members.
Brewer Pilot's Point Marina (Pumpout Boat).	Westbrook Harbor, Westbrook.	VHF CH 9, 860–399–7806.	July 1–Aug 31, daily 8 a.m. to 8 p.m..	12	$5.
Harry's Marine Repair ...	Patchogue River, Westbrook.	860–399–6165	April 1–Oct 31, daily 8 a.m. to 4:30 p.m..	7	$5.
Saybrook Point Marina ..	Connecticut River, Old Saybrook.	VHF CH 9 ..... 860–395–3080	May 1–Oct 31, daily 8 a.m. to 5 p.m..	7	$5.
Brewer Ferry Point Marina.	Connecticut River, Old Saybrook.	VHF CH 9 ..... 860–388–3260	May 1–Oct 31, M–W 8 a.m.–4:30 p.m., Th–F 8 a.m.–6 p.m., Sun 8 a.m.–5 p.m..	6	Free.
Between the Bridges Marina.	Connecticut River, Old Saybrook.	VHF CH 7, 9 ..... 860–388–1431	May 1–Nov 15, daily 8 a.m.–5 p.m..	14	$10.
Ragged Rock Marina	Connecticut River, Old Saybrook.	860–388–1049	May 1–Nov 30, 9 a.m.–4 p.m..	10	$5.
Lower Connecticut River Pumpout Boat.	Lower Connecticut River	VHF CH 68	TBD	N/A	Free.
State DEP Marine Division.	Connecticut River, Old Lyme.	VHF CH 9 ..... 860–434–8638	Memorial Day–Columbus Day, M–F 8 a.m. to 5 p.m., Sat, Sun and Monday holidays 9 a.m.–7 p.m..	4	Free.
Seaboard Marina	Connecticut River, Glastonbury.	VHF CH 68 ..... 860–657–3232	Apr 1–Oct 31, daily 9 a.m.–5 p.m..	7	$5.
Yankee Boat Yard & Marina.	Connecticut River, Portland.	VHF CH 68, 860–342–4735.	Apr 1–Nov 30, daily 8 a.m.–6 p.m..	10	$5.
Midway Marina	Connecticut River, Haddam.	VHF CH 9, 13	May 1–Oct 31, M–F 8 a.m.–4:30 p.m., Sat 10 a.m.–3 p.m., Sun by appointment.	8	Free/$5 for non-members.

LIST OF PUMPOUTS IN THE PROPOSED AREA—Continued

Name	Location	Contact information	Hours of operation (call ahead to verify)	Mean low water depth (feet)	Fee
Andrews Marina	Connecticut River, East Haddam.	860–345–2286	May 1–Nov 30, daily 9 a.m.–6 p.m..	5	Free.
Hays Haven Marina	Connecticut River, Chester.	VHF CH 9, 860–526–9366.	May 1–Oct 31, daily 8 a.m.–5 p.m..	6	Free.
Chrisholm Marina	Connecticut River, Chester.	VHF CH 9, 860–526–5147.	Apr 1–Nov 30, daily 8 a.m.–5 p.m..	6	Free.
Chester Marina	Connecticut River, Chester.	VHF CH 9, 860–526–2227.	No data	6	No data.
Brewer Deep River Marina.	Connecticut River, Deep River.	VHF CH 9, 860–526–5580.	May 1–Oct 31, daily 8 a.m.–4 p.m..	10	$5.
Brewer Dauntless Shipyard.	Connecticut River, Essex.	VHF CH 9, 860–767–0001.	June 1–Sept 30, daily 7:30 a.m. to 5 p.m..	12	Free/$5 for non-members.
The Chandlery at Essex	Connecticut River, Essex.	VHF CH 68, 860–767–8257.	May 1–Oct 31, M–Th 8 a.m.–5 p.m., F–Sun 8 a.m.–6 p.m..	12	Free/$5 for non-members.
Reynold's Garage and Marine.	Hamburg Cove, Lyme ...	860–434–0028	May 1–Oct 31 M–Sat 9–5.	4–5	$5.
Niantic Bay Marina	Niantic River, Waterford	VHF CH 9, 860–782–3774.	May 1–Oct 31, M–Th 10 a.m.–4 p.m..	5	$5.
Port Niantic Marina	Niantic River, East Lyme	VHF CH 9, 860–739–2155.	May 1–Oct 15, M–F 8 a.m.–4:30 p.m., Sat and Sun 8 a.m.–12 p.m..	7	$5.
Bayreuther's Boat Yard, Inc.	Smith Cove (Niantic), East Lyme.	VHF CH 8, 9, 860–739–6264.	May 1–Oct 31, daily 9 a.m.–4 p.m..	6	$0.50 per gallon.
Niantic River Pumpout Boat.	Niantic River, East Lyme, Waterford.	VHF CH 68	May 30–Nov 1, Sat, Sun and Monday holidays 9 a.m.–5 p.m..	N/A	Free.
Niantic Dockominium	Niantic River, East Lyme	860–739–8585	May 15–Nov 15, 8 a.m.–4 p.m..	.....	$5.
Burr's Yacht Haven, Inc	Thames River, New London.	VHF CH 9, 78, 860–443–8457.	May 1–Oct 31 M–Th 8:30 a.m.–5:30 p.m., F–Sun 8:30 a.m.–6:30 p.m..	9	$5.
Thamesport Marina	Thames River, New London.	VHF CH 9, 68, 860–437–7022.	Mar 1–Nov 30, daily 8 a.m.–8 p.m..	13	$5.
Crocker's Boatyard, Inc	Thames River, New London.	VHF CH 9, 10, 860–443–6304.	Mar 1–Nov 30, daily 7:30 a.m.–5 p.m..	12	Free.
City of Groton Wastewater Treatment Facility.	Thames River, New London.	VHF CH 72, 860–446–4806.	May 1–Oct 31, M–F 7 a.m.–3 p.m., Sat–Sun 7 a.m.–10 p.m..	20+	$5.
Marina at American Wharf.	Thames River (Norwich Harbor), Norwich.	VHF CH 68, 860–886–6363.	Apr 1–Nov 30, daily 8 a.m.–8 p.m..	25	$3 (portable), Free at gas dock.

Dated: August 31, 2005.

Robert W. Varney,

Regional Administrator, New England Region.

[FR Doc. 05–18014 Filed 9–15–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7969–8]

State Program Requirements; Revision of the Approved National Pollutant Discharge Elimination System (NPDES) Program in North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Public notice; final approval of the revision of the North Dakota NPDES Program.

SUMMARY: On September 9, 2005, the Regional Administrator for Region 8 of the United States Environmental Protection Agency approved a revision to the existing North Dakota Pollutant Discharge Elimination System program. With this revision, the State of North Dakota is now authorized to administer and enforce a pretreatment program where the State has jurisdiction. This program will be administered by the North Dakota Department of Health (NDDH), Division of Water Quality Department.

FOR FURTHER INFORMATION CONTACT: Curt McCormick (8P–W–P), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466; telephone number (303) 312–6377; e-mail address *mccormick.curt@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 402 of the Clean Water Act (CWA), 33 U.S.C. 1342, the EPA may issue permits allowing discharges of pollutants from point sources into waters of the United States, subject to various requirements of the CWA. These permits are known as National Pollutant Discharge Elimination System (NPDES) permits. Section 402(b) of the CWA, 33 U.S.C. 1342(b), allows states to apply to the EPA for authorization to administer their own NPDES permit programs. In June of 1975, North Dakota's NPDES Program was approved by the EPA.

Section 402(b) of the CWA, 33 U.S.C. 1345(c), authorizes any state desiring to administer its own industrial pretreatment program to do so in accordance with section 402(b)(8) and (9) of the CWA, following the

procedures and requirements set out in 40 CFR 403.10. On November 12, 2003, North Dakota submitted an application to EPA requesting that EPA consider a revision to the State's NPDES program to include the pretreatment program.

The EPA, having found that North Dakota's application meets all pertinent requirements in the CWA and the EPA's regulations, particularly 40 CFR parts 123 and 403, has approved North Dakota's application for primary authority to administer a pretreatment program.

II. Public Comments

EPA provided a 30-day public comment period in the **Federal Register** notice dated March 29, 2004, and in three major newspapers in the State of North Dakota for any interested member of the public to comment on this application. In addition, individual mailings were sent to persons who would be interested in this action. No comments were received. No public hearing was requested, and none was held.

III. Indian Country

North Dakota is not authorized to carry out its industrial pretreatment program in Indian country, as defined in 18 U.S.C. 1151. This includes, but is not limited to:

1. Lands within the exterior boundaries of the following Indian reservations located within the State of North Dakota:

A. Fort Totten Indian Reservation,

B. Standing Rock Indian Reservation,

C. Fort Berthold Indian Reservation, and

D. Turtle Mountain Indian Reservation,

2. Land held in trust by the U.S. for an Indian Tribe, and

3. Other land which is ''Indian country'' within the meaning of 18 U.S.C. 1151.

IV. Administrative Requirements

The EPA has long considered a determination to approve or deny a state NPDES program submission to constitute an adjudication, not a rulemaking. This is because an ''approval,'' as that term is used in the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, constitutes a ''license,'' which, in turn, is the product of an ''adjudication.'' Therefore, the requirements for rules that are established by the statutes and Executive Orders mentioned below would not apply to this action. Even if this action were considered a rulemaking, the statutes and Executive Orders discussed below would not apply for the following reasons.

Paperwork Reduction Act

The EPA has determined that there is no need for an Information Collection Request under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this action would not impose any new federal reporting or recordkeeping requirements. Because the State of North Dakota has adopted the EPA's Industrial Pretreatment Regulations at 40 CFR 403.10(f)(1), the matters subject to reporting and recordkeeping requirements will remain the same after the EPA's approval of North Dakota's program.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

As Regional Administrator for EPA Region VIII, I hereby certify, pursuant to 5 U.S.C. 605(b), that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA is generally required to prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The EPA's approval of North Dakota's program is not a ''Federal mandate,'' because there is no federal mandate for states to establish pretreatment programs.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 section 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards, *e.g.*, material specifications, test methods, sampling procedures, and business practices, that are developed or adopted by voluntary consensus standards bodies. This action does not involve the use of technical standards subject to the NTTAA.

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether its regulatory actions are ''significant'' and therefore subject to review by the OMB. The EPA has determined that this approval action is not ''significant'' for purposes of Executive Order 12866 because, as mentioned above, North Dakota has adopted the EPA's pretreatment regulations.

Executive Order 12898—Environmental Justice

Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' dated February 11, 1994, focuses federal attention on the environmental and human health conditions of minority populations and low-income populations with the goal of achieving environmental protection for all communities. Today's action will not diminish the health protection to minority and low-income populations because, as mentioned above, it will not impose any different requirements than those already in effect for industrial pretreatment facilities.

Executive Order 13045—Protection of Children

Executive Order 13045, dated April 23, 1997 (62 FR 19885), applies to any rule that (1) is determined to be ''economically significant'' as defined in Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866.

Executive Order 13175—Consultation With Tribes

Under Executive Order 13175, no Federal agency may issue a regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct

compliance costs incurred by the tribal governments or the agency consults with tribal officials early in the process of developing the proposed regulation. This action will not significantly affect any Indian tribe. As indicated above, North Dakota is not authorized to implement its pretreatment program in Indian country. The EPA will continue to administer the existing pretreatment program in Indian country in North Dakota.

Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism,'' dated August 10, 1999 (64 FR 43255), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' The phrase ''policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on States, on the relationship between the National Government and States, or on the distribution of power and responsibilities among the various levels of government.'' This action does not have federalism implications. It will not have any substantial direct effects on the states, on the relationship between States and the National Government, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. It will merely put in place a state regulatory program that is identical to the existing federal program.

Executive Order 13211—Energy Effects

Because it is not a ''significant regulatory action'' under Executive Order 12866, this action is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001).

Dated: September 9, 2005.

Kerrigan G. Clough,

Acting Regional Administrator, Region 8.

[FR Doc. 05–18422 Filed 9–15–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 13, 2005.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. SCBT Financial Corporation, Columbia, South Carolina, to acquire 100% of the voting shares of Sun Bancshares, Inc., Murrells Inlet, South Carolina, and thereby indirectly acquire SunBank, National Association, Murrells Inlet, South Carolina.

B. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Capitol Bancorp, Ltd., Lansing, Michigan, to acquire 100 percet of the voting shares of Capitol Development Bancorp Limited III, Lansing, Michigan, and thereby indirectly acquire Bank of Belleville (in organization), Belleville, Illinois. In connection with this application Capitol Development Bancorp Limited III has applied to become a bank holding company.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. FC Holdings, Inc., Houston, Texas, and FC Holdings of Delaware, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of Lake Area National Bank, Trinity, Texas.

D. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Omni Bancshares, Inc., Metairie, Louisiana, to acquire 100 percent of the voting shares of Omni Bank, Baton Rouge, Louisiana (in organization). Comments on this application must be received by September 29, 2005.

2. West Alabama Capital Corp., Reform, Alabama, to merge with West Alabama Bancshares, Inc., and thereby indirectly acquire Merchants and Farmers Bank, both of Millport, Alabama.

Board of Governors of the Federal Reserve System, September 13, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–18467 Filed 9–15–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 3, 2005.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Commonwealth Bank of Australia, Sydney, Australia; to acquire approval pursuant to Section 4(c)(8) of the BHC Act and Section 225.24(a) of Regulation Y, for its wholly-owned subsidiary, CommSec LLC, New York, New York, to engage in securities brokerage, private placement services, futures commission merchant, and other transactional services pursuant to Section 225.28(b)(7)(i)of Regulation Y.

Board of Governors of the Federal Reserve System, September 13, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.05–18466 Filed 9–15–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 11, 2005.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Synovus Financial Corp., Columbus, Georgia; to merge with Riverside Bancshares, Inc., Marietta, Georgia, and thereby indirectly acquire Riverside Bank, Marietta, Georgia.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Abdo Investments, Inc., Edina, Minnesota; to become a bank holding company by acquiring 24.2 percent of the voting shares of Rivers Ridge Holding Company, Edina, Minnesota, and thereby indirectly acquire Bankvista, Sartell, Minnesota.

Board of Governors of the Federal Reserve System, September 12, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–18383 Filed 9–15–05; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Notice of a Deviation; Motor Vehicle Management

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of a deviation.

SUMMARY: This notice announces that the General Services Administration (GSA), Office of Governmentwide Policy (M), is granting a deviation from section 102–34.335 of the Federal Management Regulation (FMR) (41 CFR 102–34.335) to all agencies whose purchase of gasoline for motor vehicles has been impacted by Hurricane Katrina. This deviation will allow Federal agencies to purchase premium gasoline for government owned and leased vehicles when lower grade gasoline is not available. This deviation can be found at *www.gsa.gov/vehiclepolicy* and clicking on ''Deviation from 41 CFR 102–34.335''.

DATES: The deviation announced in this notice is effective September 8, 2005.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact General Services Administration, Office of Governmentwide Policy, Office of Travel, Transportation and Asset Management, at (202) 501–1777 and cite the deviation regarding motor vehicle management dated September 8, 2005.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Management Regulation (FMR) section 102–34.335 (41 CFR 102–34.335) prohibits the use of premium grade gasoline in any motor vehicle owned or leased by the Government unless the motor vehicle specifically requires premium grade gasoline. This section states that drivers are to use the grade (octane rating) of gasoline recommended by the motor vehicle manufacturer when fueling motor vehicles owned or leased by the Government.

As a result of the catastrophic destruction caused by Hurricane Katrina, agencies have reported that their vehicles operators are unable to purchase lower octane gasoline for their vehicles to complete their missions. In many areas, agencies have only been able to procure premium gasoline for use in their motor vehicles. The original intent of section 102–34.335 was to reduce fuel costs and eliminate the unnecessary use of premium gasoline in vehicles capable of being operated on lower grade gasoline.

B. Procedures

This deviation is located on the Internet at *www.gsa.gov/vehiclepolicy* and clicking on ''Deviation from 41 CFR 102–34.335''.

Dated: September 12, 2005.

Tom Horan,

Deputy Director.

[FR Doc. 05–18408 Filed 9–15–05; 8:45 am]

BILLING CODE 6820–14–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–05–0494]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 371–5983 or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington,

DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Exposure to Aerosolized Brevetoxins during Red Tide Events (OMB No. 0920–0494)—Revision—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Karenia brevis (formerly Gymnodinium breve) is the marine dinoflagellate responsible for extensive blooms (called red tides) that form in the Gulf of Mexico. K. brevis produces potent toxins, called brevetoxins, which have been responsible for killing millions of fish and other marine organisms. The biochemical activity of brevetoxins is not completely understood and there is very little information regarding human health effects from environmental exposures, such as inhaling brevetoxin that has been aerosolized and swept onto the coast by offshore winds. The National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC) has recruited people who work along the coast of Florida and who are periodically occupationally exposed to aerosolized red tide toxins.

We have administered a baseline respiratory health questionnaire and conducted pre- and post-shift pulmonary function tests during a time when there is no red tide reported near the area. When a red tide developed, we administered a symptom survey and conducted pulmonary function testing (PFT). We compared (1) symptom reports before and during the red tide and (2) the changes in baseline PFT values during the work shift (differences between pre- and post-shift PFT results) without exposure to red tide with the changes in PFT values during the work shift when individuals are exposed to red tide.

The exposures experienced by our study cohort have been minimal, and we plan to conduct another study (using the same symptom questionnaires and spirometry tests) during a more severe red tide event.

In addition, we are now planning to quantify the levels of cytokines in nasal exudates to assess whether they can be used to verify exposure and to demonstrate a biological effect (*i.e.*, allergic response) following inhalation of aerosolized brevetoxins. We plan to include not only the study subjects who have been involved in our earlier studies, but also any new individuals who are hired to work at the relevant beaches. As mentioned above, we have collected part data on occupational exposure to red tides. However, because we are dealing with natural phenomena and are subject literally to the tides, and because the scientific questions are evolving as we learn more, we must extend our data collection time for an additional three years. There are no costs to respondents except for their time. The total estimated total burden hours are 195.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses per respondent	Average burden per response
Pulmonary History Questionnaire	5	1	20/60
Spirometry	25	6	20/60
Nasal exudates collection/Nasal wash	25	6	10/60
Symptom Questionnaire	25	6	5/60
Hearing test	25	6	15/60
Beach Survey	5	160	5/60

Dated: September 9, 2005.

Joan Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–18407 Filed 9–15–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Mind/Body Research and Chronic Disease Conditions, Request for Applications Number DP–05–133

Correction: This notice was published in the **Federal Register** on September 8, 2005, Volume 70, Number 173, pages 53375–53376. The time and date of the meeting has been changed.

Time and Date: 2 p.m.–3:30 p.m., September 22, 2005.

Meeting Location: Teleconference.

Contact Person for More Information: J. Felix Rogers, PhD, Scientific Review Administrator, National Center for Chronic Disease Prevention and Health Promotion, 4770 Buford Highway, MS–K92, Atlanta, GA 30341, Telephone 404.639.6101.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: September 9, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–18404 Filed 9–15–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10036]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions;

(2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Inpatient Rehabilitation Assessment Instrument and Data Set for PPS for Inpatient Rehabilitation Facilities and Supporting Regulations in 42 CFR Sections 412.23, 412.604, 412.606, 412.610, 412.614, 412.618, 412.626, 413.64; *Form Number:* CMS–10036 (OMB#: 0938–0842); *Use:* This is a request to use the IRF–PAI (Inpatient Rehabilitation Facilities—Patient Assessment Instrument) and its supporting manual for the implementation phase of the Inpatient Rehabilitation PPS (Prospective Payment System). This payment system is to cover both operating and capital costs for inpatient rehabilitation hospital services. It will apply to rehabilitation units of acute care hospitals as well as to rehabilitation hospitals, both of which are exempt from the current Medicare PPS which is generally applicable for inpatient hospital services. Use of this instrument will enable CMS to implement a classification and payment system for the legislatively mandated inpatient rehabilitation hospital and the aforementioned exempt units. *Frequency:* Recordkeeping, third party disclosure and reporting—On occasion; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 1,165; *Total Annual Responses:* 390,000; Total Annual Hours: 421,939.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/regulations/pra/,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on November 15, 2005. CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Bonnie L Harkless, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 1, 2005.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–18004 Filed 9–15–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–138, CMS–339, CMS–1450]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Geographic Classification Review Board (MGCRB) Procedures and Supporting Regulations in 42 CFR 412.256 and 412.230; *Form Nos.:* CMS–R–138 (OMB # 0938–0573); *Use:* Section 1886(d)(10) of the Social Security Act established the Medicare Geographic Classification Review Board (MGCRB), an entity with the authority to accept short-term hospital inpatient prospective payment system applications from hospitals requesting geographic reclassification for wage index or standardized payment amounts and to issue decisions on these requests. This regulation sets up the application process for prospective payment system hospitals that choose to appeal their geographic status to the MGCRB. This regulation also establishes procedural guidelines for the MGCRB; *Frequency:* Reporting—Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 500; *Total Annual Responses:* 500; *Total Annual Hours:* 500.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Provider Cost Report Reimbursement Questionnaire and Supporting Regulations in 42 CFR 413.20, 413.24, and 415.60; *Form Nos.:* CMS–339 (OMB # 0938–0301); *Use:* The purpose of Form CMS–339 is to assist the provider in preparing an acceptable cost report and to minimize subsequent contact between the provider and its intermediary. Form CMS–339 provides the basic data necessary to support the information in the cost report. This includes information the provider uses to develop the provider and professional components of physician compensation so that compensation can be properly allocated between the Part A and the Part B trust funds. CMS is currently working on eliminating Form CMS–339 and including the applicable questions on the individual cost report forms. Because of the time required to include the applicable questions in each of the individual cost reports, CMS is revising the currently approved information collection; *Frequency:* Annually; *Affected Public:* Business or other for-profit, not-for-profit institutions, State, Local or Tribal Governments; *Number of Respondents:* 35,904; *Total Annual Responses:* 35,904; *Total Annual Hours:* 618,210.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Uniform Institutional Provider Bill and Supporting Regulations in 42 CFR 424.5; *Form No.:* CMS–1450 (OMB #0938–0279); Use: Section 42 CFR 424.5(a)(5) requires providers of services to submit claims prior to Medicare reimbursement. Charges are coded by revenue codes. The bill specifies diagnoses according to the International Classification of Diseases, Ninth Edition (ICD–9–CM) codes. Inpatient procedures are identified by ICD–9–CM codes, and outpatient procedures are described using the Healthcare Common Procedure Coding System (HCPCS). These are standard systems of identification for all major health insurance claims payers. Submission of information on the CMS–1450 permits Medicare intermediaries to receive consistent data for proper payment;

Frequency: On occasion; *Affected Public:* Not-for-profit institutions, business or other for profit; *Number of Respondents:* 51,629; *Total Annual Responses:* 174,461,278; *Total Annual Hours:* 1,997,581.

To obtain copies of the supporting statement and any related forms for these paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/regulations/pra/,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB Desk Officer at the address below, no later than 5 p.m. on October 17, 2005. OMB Human Resources and Housing Branch, Attention: Christopher Martin, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 1, 2005.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–18052 Filed 9–15–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–1856/1893, CMS–R–254, CMS–10160, CMS–10154]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Certification in the Medicare and/or Medicaid Program to Provide Outpatient Physical Therapy (OPT) and/or Speech Pathology Services, OPT Speech Pathology Survey Report and Supporting Regulations in 42 CFR 485.701–485.729.; *Form No.:* CMS–1856, CMS–1893 (OMB # 0938–0065); *Use:* The Medicare Program requires OPT providers to meet certain health and safety requirements. The request for certification form is used by State agency surveyors to determine if minimum Medicare eligibility requirements are met. The survey report form records the result of the on-site survey; *Frequency:* On occasion and Other—every 6 years; *Affected Public:* Business or other for-profit; *Number of Respondents:* 2,968; *Total Annual Responses:* 495; *Total Annual Hours:* 866.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* National Medicare Education Program (NMEP); *Form No.:* CMS–R–254 (OMB # 0938–0738); *Use:* The NMEP was developed to inform people with Medicare, their family members, and other interested parties about their Medicare options. The Medicare Modernization Act of 2003 expanded the program to include among other things, a new Prescription Drug Benefit; therefore, this package has been revised to include this information. The NMEP employs numerous communication channels to educate people with Medicare and help them make more informed decisions concerning the Medicare program benefits; health plan choices; supplemental health insurance; rights, responsibilities, and protections; and preventive health services. As part of the NMEP, CMS must provide information to this population about the Medicare program and their Health Plan options, as well as information about the new prescription drug coverage to help them choose the option that is right for them. This survey seeks to assess the awareness, knowledge, understanding and experiences of people with Medicare regarding the Medicare program overall and these new initiatives; *Frequency:* On occasion; *Affected Public:* Individuals or Households; *Number of Respondents:* 5,700; *Total Annual Responses:* 5,700; *Total Annual Hours:* 1,425.

3. *Type of Information Collection Request:* New collection; *Title of Information Collection:* The Consumer Assessment of Health Behaviors Survey; *Form No.:* CMS–10160 (OMB # 0938–NEW); *Use:* New focus on personalizing messages by relating health care choices with individual beliefs may help guide these educational efforts. The intent of this survey is to understand the role personal responsibility plays when people with Medicare make health care decisions; Affected Public: Individuals or households; *Number of Respondents:* 1580; *Total Annual Responses:* 1580; *Total Annual Hours:* 395.

4. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Physician Assessment of Hospital Quality Reports; *Form No.:* CMS–10154 (OMB # 0938–NEW); *Use:* This assessment will monitor the attitudes and behaviors of physicians as they relate to the concerns of their patients who have been exposed to hospital quality-of-care reports at CMS's Web Site; *Affected Public:* Individuals or households; *Number of Respondents:* 1730; *Total Annual Responses:* 1730; *Total Annual Hours:* 346.

To obtain copies of the supporting statement and any related forms for these paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/regulations/pra/*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB Desk Officer at the address below, no later than 5 p.m. on October 17, 2005.

OMB Human Resources and Housing Branch, Attention: Christopher Martin, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 8, 2005.

Michelle Short,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–18508 Filed 9–15–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5017–N]

Medicare Program; Medicare Health Care Quality (MHCQ) Demonstration Programs

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice informs eligible health care groups of an opportunity to apply to participate in the Medicare Health Care Quality demonstration. The goal of the demonstration is to improve the quality of care and services delivered to Medicare beneficiaries through a major system redesign that fosters best practice guideline usage, continuous quality and patient safety improvement, shared decision making between providers and patients, and the delivery of culturally and ethnically appropriate care. This notice contains information on how to obtain the complete solicitation and supporting information.

A competitive process will be used to select 8 to 12 health care organizations (that is, physician group practices, integrated delivery systems, and regional coalitions of physician group practices and integrated delivery systems) to participate in the 5-year demonstration. The application solicitation will be conducted in two phases.

DATES: For the initial solicitation, applications will be considered if received at the appropriate address, provided in the **ADDRESSES** section, no later than 5 p.m. e.s.t., on January 30, 2006. For the second solicitation phase, applications will be considered if we receive them no later than 5 p.m. e.d.t., on September 29, 2006. Applicants intending to submit a proposal for the second phase review should forward a letter of intent to the same address listed in the **ADDRESSES** section of this notice, no later than January 30, 2006.

LETTER OF INTENT REQUIREMENTS: The letter of intent should include the following:

- An outline of the demonstration proposal.
- A description of the proposed organizational structure.
- A timeline for development and implementation of the proposed model.
- A projected or desired date for submission of the application.

This will enable us to—

1. Better plan for the second phase of the solicitation;
2. Keep prospective applicants apprised of any new developments over the course of the solicitation process; and
3. Ensure that they have the latest information for preparing their applications.

ADDRESSES: Mail or deliver applications to the following address: Centers for Medicare & Medicaid Services, Attention: Cynthia Mason, Mail Stop: C4–17–27, 7500 Security Boulevard, Baltimore, Maryland 21244.

Because of staff and resource limitations, we cannot accept applications by facsimile (FAX) transmission or by e-mail.

FOR FURTHER INFORMATION CONTACT: Cynthia Mason at (410) 786–6680 or *mma646@cms.hhs.gov.* Interested parties can obtain complete solicitation and supporting information on the CMS Web site at *http://www.cms.hhs.gov/researchers/demos/mma646/.* Paper copies can be obtained by writing to Cynthia Mason at the address listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Section 646 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) amends title XVIII (42 U.S.C. 1395 *et seq.*) of the Social Security Act (the Act) by establishing the Medicare Health Care Quality (MHCQ) Demonstration Programs. The MHCQ demonstration will test major changes to improve quality of care while increasing efficiency across an entire health care system. Broadly stated, the goals of the Medicare Health Care Quality demonstration are to—

- Improve patient safety;
- Enhance quality;
- Increase efficiency; and
- Reduce scientific uncertainty and the unwarranted variation in medical practice that results in both lower quality and higher costs.

The legislation anticipates that we can facilitate these overarching goals by providing incentives for system redesigns built on adoption and use of decision support tools by physicians and their patients, such as evidence-based medicine guidelines, best practice guidelines, and shared decision-making programs; reform of payment methodologies; measurement of outcomes; and enhanced cultural competence in the delivery of care.

II. Provisions of This Notice

The MHCQ demonstration will test the ability of health care groups to implement major system changes that reallocate resources to improve quality and reduce costs of Medicare Parts A, B, and C. Each proposal is expected to address all of the Institute of Medicine's ''Six Aims for Improvement.'' The proposed system redesign should:

- Include steps to improve patient safety in the delivery of care,
- Increase the effectiveness of the health care delivered, minimizing the over- and under-utilization of services Through the use of best practice guidelines and other measures,
- Prioritize patient-centeredness in the delivery of care with primary focus on patients' needs and comfort, Including increased emphasis on patient education and development of self-care skills,
- Improve the timeliness of care, significantly reducing delay in the delivery of needed health care services,
- Emphasize ways of improving efficiency in care delivery and thus improving quality, and
- Assure equity of care for all persons.

Further, we are persuaded that such system redesign should include the integration of health information technology consistent with the national health information infrastructure strategy and that—

- Informs clinical practice;
- Interconnects clinicians;
- Personalizes health care; and
- Improves population health.

We intend to use this demonstration to identify, develop, test, and disseminate major and multi-faceted improvements to the entire health care system. The focus will be on redesign projects that ''bundle'' multiple delivery improvements so as to introduce ''system-ness'' across the spectrum of care delivery—changes across and even between organizations. The redesign must make the system patient-focused and must undo the effects of a payment methodology that systematically fragments care while encouraging both omissions and duplication of care. At its ''grandest,'' particularly if a demonstration project is conducted by a regional coalition and entails the participation of other payers besides Medicare, this demonstration affords us and the awardees an opportunity to reinvent the health care delivery system.

In keeping with our view that this demonstration authority is intended to test models of basic health care system redesign, including payment reform, we note that the statute provides broad authority for us to waive both payment and non-payment provisions of the Medicare program. Therefore, we are

not specifying particular models of health care systems that demonstration applicants must propose and test, but are looking to applicants to specify the models they believe they can successfully put into practice for the patients they serve in their communities.

As provided by applicable Federal statute, physician groups, integrated delivery systems, and organizations representing regional coalitions of physician groups or integrated delivery systems are eligible to apply. Integrated delivery systems must include a full range of health care providers including hospitals, clinics, home health agencies, ambulatory surgery centers, skilled nursing facilities, rehabilitation facilities and clinics, and employed, independent or contracted physicians. Eligible organizations and coalitions may form a new corporate entity for the purpose of representing provider organizations or eligible organizations may designate an existing entity as their representative. However, the entity organizing the coalition and developing the demonstration proposal must be an eligible provider organization.

Payments under the MHCQ demonstration will be made for services furnished to Medicare beneficiaries and will be tied to cost savings, as well as improvements in process and outcome measures, increases in efficiencies, and reductions in costs in the targeted population compared to a similar group or sample. Eligible organizations may propose a variety of payment methodologies as long as those methodologies are amenable to an evaluation methodology based upon Medicare claims data. In addition, all proposals must assure budget neutrality and no duplication of payments for existing Medicare benefits. We will not be providing funding for start-up or other costs.

III. Collection of Information Requirements

This information collection requirement is subject to the Paperwork Reduction Act of 1995 (PRA); however, the collection is currently approved under OMB control number 0938–0880 entitled ''Medicare Demonstration Waiver Application'' with a current expiration date of July 31, 2006.

Authority: Section 646 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA).

(Catalog of Federal Domestic Assistance Program; No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 19, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–18144 Filed 9–9–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Annual Statistical Report on Children in Foster Homes and Children in Families Receiving Payment in Excess of the Poverty Income Level from a State Program Funded Under Part A of Title IV of the Social Security Act.

OMB No.: 0970–0004.

Description: The Department of Health and Human Services is required to collect these data under section 1124 of Title I of the Elementary and Secondary Education Act, as amended by Pub. L. 103–382. The data are used by the U.S. Department of Education for allocation of funds for programs to aid disadvantaged elementary and secondary students. Respondents include various components of State Human Service agencies.

Respondents: The 52 respondents include the 50 States, the District of Columbia and Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Annual Statistical Report on Children in Foster Homes and Children Receiving Payments in Excess of the Poverty Level from a State Program Funded Under Part A of Title IV of the Social Security Act	52	1	264.35	13,746

Estimated Total Annual Burden Hours: 13,746.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *grjohnson@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: September 12, 2005.

Robert Sargis,

Reports Clearance, Officer.

[FR Doc. 05–18442 Filed 9–15–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: August 2005

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of August 2005, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusions is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under

the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject name, address	Effective date
PROGRAM-RELATED CONVICTIONS	
ADONIZIO, CHARLES ..... WILKES-BARRE, PA	9/20/2005
BENN, STANLEY ..... BALTIMORE, MD	9/20/2005
BOTKIN, JACQUI ..... DAVIE, FL	9/20/2005
BROOMFIELD, ERNEST ..... COLUMBUS, OH	9/20/2005
BROWN, MICHAEL ..... CORINTH, TX	9/20/2005
BUSTILLOS, FLORA ..... LA PUENTE, CA	9/20/2005
BYRD, MICKIE ..... OXFORD, OH	9/20/2005
CALIP, HERMELINA ..... SUISUN, CA	9/20/2005
CALLETANO, ALBERTO ..... SONOMA, CA	9/20/2005
CAMPOS, REYNA ..... NORTH HOLLYWOOD, CA	9/20/2005
CARR, JULIA ..... SALEM, OR	9/20/2005
CARROLL, JO ..... WILDWOOD, MO	9/20/2005
CASALE, ROBERT ..... HAR TSDALE, NY	9/20/2005
CHANDLER, MICHELLE ..... ELLENSBURG, WA	9/20/2005
CHANGE OF HEART INC ..... KANSAS CITY, MO	9/20/2005
CHILLICOTHE YOUTH SERVICES, LLC ..... CHILLICOTHE, MO	9/20/2005
COOPER, JENNIFER ..... MARIETTA, SC	9/20/2005
COWAN, JANET ..... DAVENPORT, IA	9/20/2005
CRIST, BARBARA ..... WESTERVILLE, OH	9/20/2005
CRUZ-NATAL, MILDRED ..... BOCA RATON, FL	9/20/2005
DI BIASE, JILL ..... VERGENNES, VT	9/20/2005
DUDLEY, CLARENCE ..... NEW IBERIA, LA	9/20/2005
EASTON, ALBERTA ..... JACKSONVILLE, FL	9/20/2005
EDWARDS (SOLOMON), NATASHA ..... GOLDSBORO, NC	9/20/2005
ELLIS, BRIAN ..... KANSAS CITY, MO	9/20/2005
FERNANDEZ, ANA ..... MIAMI, FL	9/20/2005
FILCHECK, WILIIAM ..... UNIONTOWN, PA	9/20/2005
FITZGERALD, TAMARA ..... HOUSTON, TX	9/20/2005
FLETCHER, PATRICIA ..... NEWTON, IA	9/20/2005
FUENTES, EVILIA ..... ROSEMEAD, CA	9/20/2005
GODARD, CHRISTOPHER ..... UNIONTOWN, OH	9/20/2005
GONZALEZ, ALBERTO ..... MIAMI, FL	9/20/2005
HALSTEAD, RONALD ..... ELKVILLE, IL	9/20/2005
HAMES, ROBBIE ..... FORT WORTH, TX	9/20/2005
HARRIS, APRIL ..... WARREN, OH	9/20/2005
HENRY, SHIRLEEN ..... BRONX, NY	9/20/2005
HERNANDEZ, MARIA ..... MIRAMAR, FL	9/20/2005
HIRSCH, SUSAN ..... WANTAUGH, NY	9/20/2005
HODGES, CORVALIS ..... OXON HILL, MD	9/20/2005
HOLLAND, MONICA ..... RIALTO, CA	9/20/2005
HOWARD, AMY ..... DAVENPORT, IA	9/20/2005
INGEMUNSON, TRIXIE ..... SIOUX FALLS, SD	9/20/2005
ISLAS, MARIA ..... CALIPATRIA, CA	9/20/2005
JACKSON, CLEMIS ..... BEAUMONT, TX	9/20/2005
JACOBS, JOHNETTA ..... DETROIT, MI	9/20/2005
JANATI, ABDORASOOL ..... CUMBERLAND, MD	9/20/2005
JANATI, FOROUZANDEH ..... PHILADELPHIA, PA	9/20/2005
JIN, KYO ..... CALIPATRIA, CA	9/20/2005
JOHNSON, KELLION ..... ROUND ROCK, TX	9/20/2005
JONES, CONNIE ..... WESTERVILLE, OH	9/20/2005
KAI, LYLE ..... KILUA, HI	1/20/2004
KIM, SUNG ..... CERRITOS, CA	9/20/2005
KINNEY, ANGELA ..... NEW ORLEANS, LA	9/20/2005
KIRKBRIDE, CHRISTINA ..... ZANESVILLE, OH	9/20/2005
LEVY, EDWARD ..... FOREST HILLS, NY	9/20/2005
LIM, JOHN ..... WASCO, CA	9/20/2005
LOS ANGELES TREATMENT SERVICES, INC ..... LOS ANGELES, CA	9/20/2005
LOVELACE, KENNETH ..... LOS ANGELES, CA	9/20/2005
MARRERO-ARCELAY, CARMEN ..... BAYAMON, PR	9/20/2005
MAUS, CHRISTOPHER ..... LAKE MARY, FL	9/20/2005
MAYO, JULIO ..... PETALUMA, CA	9/20/2005
MCGAHEE, BERNARD ..... SAVANNAH, GA	9/20/2005
MEYER, JEANIFER ..... LA JUNTA, CO	9/20/2005
MILLER, SHELLY ..... BLAINE, MN	9/20/2005
OLD RED HOOK PHARMACY, INC ..... BROOKLYN, NY	9/20/2005
PETERS, RAPHAEL ..... PRINCETON, FL	9/20/2005
POLLEY, LUTRICIA ..... LONGVIEW, TX	9/20/2005
PRAMOJ, PONGTHEP ..... DOUGLAS, AZ	9/20/2005
PRO MED SERVICES, INC ..... THE VILLAGES, FL	9/20/2005
PUCKETT, MICHAEL ..... COLUMBUS, OH	9/20/2005
RODRIGUEZ, ROSA ..... MIAMI, FL	9/20/2005
ROLAND, SANDRA ..... SHAWNEE, KS	9/20/2005
SALAZAR, REBECA ..... SALT LAKE CITY, UT	9/20/2005
SELDERS, MONET ..... HOUSTON, TX	9/20/2005
SMITH, MARCIA ..... HOUSTON, TX	9/20/2005
STITZLEIN, SHANNON ..... COLUMBUS, OH	9/20/2005
SWANSON, CRAIG ..... TAFT, CA	9/20/2005
TAYLOR, JOHN ..... MARIETTA, GA	9/20/2005
TAYLOR, SCOTT ..... MORGANTOWN, WV	9/20/2005
TURNER, DARLENE ..... JACKSONVILLE, FL	9/20/2005
TURNER, PETRA ..... QUITMAN, MS	9/20/2005
VAZQUEZ-ORTIZ, ALBERTO .. MAYAGUEZ, PR	9/20/2005
VOAN, GINGER ..... UMPIRE, AR	9/20/2005
WASSON, SARAH ..... FARMINGTON, NM	9/20/2005
YANES, KIMBERLY ..... FRESNO, CA	9/20/2005
FELONY CONVICTION FOR HEALTH CARE FRAUD	
ABOUELHODA, AHMED ..... WOODSIDE, NY	9/20/2005
ASTURIAS-ZARATE, ACENAS WEST DES MOINES, IA	9/20/2005
BALDWIN, VERONICA ..... MIDDLETOWN, OH	9/20/2005
BAQUIRING, DESIREE ..... KAILUA, HI	9/20/2005
BIRKHIMER, DOUGLAS ..... COLUMBUS, OH	9/20/2005
CASTELLANO, MONICA ..... HOUSTON, TX	9/20/2005
CLEMENTE, WALTER ..... POINT PLEASANT, WV	9/20/2005
CZARNOTA, SCOTT ..... MONROE TWP, NJ	9/20/2005
DARNER, MARK ..... SEAGOVILLE, TX	9/20/2005
DODGEN, NEIL ..... WEST BRANCH, IA	9/20/2005

Subject name, address	Effective date
FOWLER, MICHELLE ..... WILLINGBORO, NJ	9/20/2005
GILLHAM, LAMONT ..... LINCOLN, NE	9/20/2005
GODDARD, ANDREW ..... CANAL FULTON, OH	9/20/2005
GUREVICH, NATALIA ..... ASTORIA, NY	9/20/2005
IORI, MARK ..... BATAVIA, OH	9/20/2005
IVERSON, JESSICA ..... SIOUX CITY, IA	9/20/2005
KEARSE, ROBERTA ..... BROOKLYN, NY	9/20/2005
KOHLL, LOUIS ..... OMAHA, NE	9/20/2005
LUBAN, ARTHUR ..... BROOKLYN, NY	9/20/2005
MCELROY, ROBIN ..... W CARROLLTON, OH	9/20/2005
PLYMESSER, RESHELL ..... GRAND JUNCTION, CO	9/20/2005
STACY, KENNETH ..... PORTLAND, OR	9/20/2005
STALEY, KEVIN ..... OVERLAND PARK, KS	9/20/2005
TAUSCHEK, JENNIFER ..... TUCKERTON, NJ	9/20/2005
TUCKER, HELEN ..... CHANDLER, AZ	9/20/2005
VULTAGGIO, DOROTHY ..... WEST CHESTER, OH	9/20/2005
ZARATE, JESUS ..... WEST DES MOINES, IA	9/20/2005
ZEBRASKY, CHRISTIAN ..... HARTLAND, WI	9/20/2005
FELONY CONTROL SUBSTANCE CONVICTION	
CASTLE, CHRISTOPHER ..... SEYMOUR, TN	9/20/2005
CLARK, NELDA ..... JONESBORO, AR	9/20/2005
COUTS, ANGELA ..... SEDALIA, MO	9/20/2005
DAVIS, MARLOU ..... ST LOUIS, MO	9/20/2005
DEWILDE, STEVEN ..... ALGONAC, MI	9/20/2005
EWING, SHERRI ..... LAME DEER, MT	9/20/2005
GEBBIA, DANIEL ..... MINERSVILLE, PA	9/20/2005
GONZALEZ, ROSE ..... CORCORAN, CA	9/20/2005
HURWITZ, WILLIAM ..... CUMBERLAND, MD	9/20/2005
KACHLANY, MATTHEW ..... BOYNTON BEACH, FL	9/20/2005
LAKATOS, GEORGIANNE ..... LAKE STATION, IN	9/20/2005
MAGEE, URSULA ..... DALLAS, TX	9/20/2005
MASTROKOSTAS, ATHANASIOS ..... STATEN ISLAND, NY	9/20/2005
MATTHEWS, DIANA ..... PORT ST LUCIE, FL	9/20/2005
MCCLAIN, KILEY ..... WEST JORDAN, UT	9/20/2005
MONDAY, KIMBERLY ..... LIMA, OH	9/20/2005
ONOWU, IKECHUKWU ..... MORGANTOWN, WV	9/20/2005
PATTERSON, CHARLOTTE .... ARLINGTON, TX	9/20/2005
PERALES, VALENTINE ..... FT STOCKTON, TX	9/20/2005
POTETTI, KEITH ..... GLENVIEW, IL	9/20/2005
POWELL, DANA ..... MILTON, FL	9/20/2005
ROBINSON, MARILEE ..... DAYTONA BEACH, FL	9/20/2005
ROMO, NUBIA ..... PHOENIX, AZ	9/20/2005
SCHEYER, WILLIAM ..... KIRKLAND, WA	9/20/2005
STEED, REGINALD ..... LOS ANGELES, CA	9/20/2005
WILLIAMS, FORTUNE ..... OAKLAND, CA	9/20/2005
PATIENT ABUSE/NEGLECT CONVICTIONS	
ANDERSON, CARMEN ..... BENTON HARBOR, MI	9/20/2005
ANDERSON, TERRIE ..... NORWOOD, LA	9/20/2005
ASATO, DICKIE ..... HONOLULU, HI	9/20/2005
BAIGELMAN, LEE ..... CORAL SPRINGS, FL	9/20/2005
BOWERMAN, COLIN ..... OLATHE, CO	9/20/2005
BROWN, ELLA ..... NORWOOD, LA	9/20/2005
CAMPBELL, OZA ..... TRENTON, TN	9/20/2005
CARSON, LATIASHA ..... HOUMA, LA	9/20/2005
CHANDLER, BERRY ..... MANDEVILLE, LA	9/20/2005
DAVIDSON, DONALD ..... VALLEY CENTER, CA	9/20/2005
DOMAGALA, REBECCA ..... DULUTH, MN	9/20/2005
FETTERHOFF, AMANDA ..... FANSHAWE, OK	9/20/2005
FITZ, REBECCA ..... BOONE, IA	9/20/2005
GADDIS, GINA ..... SUPERIOR, CO	9/20/2005
GARGANO, KATIE ..... CHISHOLM, MN	9/20/2005
HALLAM, MIGDALIA ..... EAST UTICA, NY	9/20/2005
HARO, ARLENE ..... HEMET, CA	9/20/2005
HILL, BETTY ..... DES MOINES, IA	9/20/2005
KIEKLAK, GERALD ..... EUGENE, OR	9/20/2005
LIPSEY, JOYCE ..... PLANTERSVILLE, MS	9/20/2005
MORROW, JESSE ..... DUCHESNE, UT	9/20/2005
PEETE, DANIEL ..... BETHANY, OK	9/20/2005
POPE, BRIAN ..... EVERETT, WA	9/20/2005
PORDASH, DARRIN ..... MANSFIELD, OH	9/20/2005
RIOS, LINDA ..... BRIGHTON, CO	9/20/2005
ROBERSON, ROSE ..... SHREVEPORT, LA	9/20/2005
ROBINSON, CAROLYN ..... JACKSON, TN	9/20/2005
SALINAS, FABIAN ..... ANN ARBOR, MI	9/20/2005
SCHOLTUS, LOREE ..... OTTUMWA, IA	9/20/2005
SCHOTT, DEBORAH ..... ALFRED, ND	9/20/2005
SHAW, WILLIE ..... BROWNSVILLE, TN	9/20/2005
SMITH, CAROL ..... PAONIA, CO	9/20/2005
STEWART, MARY ..... BATON ROUGE, LA	9/20/2005
THOMAS, HELEN ..... CRAWFORD, MS	9/20/2005
TRAVERSO, JOSEPH ..... W ORANGE, NJ	9/20/2005
VAGSHENIAN, GREGORY ..... AUSTIN, TX	9/20/2005
WASHINGTON, YVONNE ..... LAWTON, OK	9/20/2005
WILLIAMS, SIDNEY ..... APPLE VALLEY, MN	9/20/2005
CONVICTION FOR HEALTH CARE FRAUD	
CORKERY, JOSEPH ..... PENACOOK, NH	9/20/2005
EKELUIS, ANETTE ..... NEWPORT BEACH, CA	9/20/2005
GRUBBS, MARY ..... NEW ORLEANS, LA	9/20/2005
HAGEN, BRENDA ..... AUSTIN, TX	9/20/2005
KETCHUM, DAN ..... ALLENDALE, MI	9/20/2005
LOVELACE, ELSIE ..... ANN ARBOR, MI	9/20/2005
MARTINEZ, ARTURO ..... LOS ANGELES, CA	9/20/2005
TELLINGHUISEN, TONYA ..... SAC CITY, IA	9/20/2005
CONTROLLED SUBSTANCE CONVICTIONS	
BROWN, KRISTY ..... CHANNELVIEW, TX	9/20/2005
LICENSE REVOCATION/SUSPENSION/ SURRENDERED	
ABURTO, PATRICIA ..... MIAMI, FL	9/20/2005
ACO PHARMACY, INC ..... MIAMI, FL	9/20/2005
ADAMS, MARK ..... JACKSON, MO	9/20/2005
ADLER, STEPHEN ..... MOLINE, IL	9/20/2005
ALEXANDER, ALAN ..... MEMPHIS, TN	9/20/2005
ALNE, CYNTHIA ..... BOTHELL, WA	9/20/2005
ANDERSON, NANCY ..... GOLDEN, CO	9/20/2005
ANDREWS, GEORGE ..... TEMPLETON, MA	9/20/2005
BADOUR, JOAN ..... MESA, AZ	9/20/2005

Subject name, address	Effective date
BAROUD, KHALIL ..... CRIVITZ, MI	9/20/2005
BASKA, ROBERT ..... ALPHARETTA, GA	9/20/2005
BEARDSLEY, DAVID ..... RICHLAND, WA	9/20/2005
BEAVER, MICHELE ..... SOUTH HOUSTON, TX	9/20/2005
BECKMAN, LINDSEY ..... LITTLETON, CO	9/20/2005
BENHAM, THERESA ..... SAN DIEGO, CA	9/20/2005
BICKEL, GORDON ..... CLARKSVILLE, TN	9/20/2005
BISHOP, CURTIS ..... ATTICA, MI	9/20/2005
BOBERSKY, ANDREA ..... SCRANTON, PA	9/20/2005
BOGGESS, DELANA ..... DUNBAR, WV	9/20/2005
BOLINGER, ROY ..... KNOXVILLE, TN	9/20/2005
BONHOMME, LOUVEDOR ..... IMMOKALEE, FL	9/20/2005
BOOKER, MONICA ..... PHOENIX, AZ	9/20/2005
BOOTH, JOHN ..... BURLINGTON, NC	9/20/2005
BOWERS, DIONNA ..... ROCKLIN, CA	9/20/2005
BRACKEN, DANIEL ..... CINCINNATI, OH	9/20/2005
BRECKENRIDGE, CATHY ..... PASADENA, TX	9/20/2005
BRISCOE, PENNY ..... IMPERIAL BEACH, CA	9/20/2005
BUCHANAN, ROBIN ..... TEMPE, AZ	9/20/2005
BUCKMASTER, ANDREA ..... SARASOTA, FL	9/20/2005
BURGDORF, NANCY ..... HUTTO, TX	9/20/2005
BURKE, BRIAN ..... BERKELEY, CA	9/20/2005
BUTLER, KERI ..... ERWIN, NC	9/20/2005
CARDONA, CELIA ..... FONTANA, CA	9/20/2005
CASEY, CARLIE ..... BELLINGHAM, WA	9/20/2005
CESAR, PEREZ ..... TAMPA, FL	9/20/2005
CHAPELO, KATHRYN ..... SPINDALE, NC	9/20/2005
CHAPMAN, ROSALIE ..... SAN DIEGO, CA	9/20/2005
CLEMENTS, JACQUELIN ..... TUCSON, AZ	9/20/2005
CLEMONS, CHRISTEL ..... DUNLAP, TN	9/20/2005
COLE, JAMIE ..... HELENA, MT	9/20/2005
COPAS, GLENDA ..... GLENDALE, AZ	9/20/2005
CORNETTE, JACKIE ..... FLORAHOME, FL	9/20/2005
CRABTREE, ANDREA ..... NAMPA, ID	9/20/2005
CRASE, ANNE ..... CENTRALIA, IL	9/20/2005
CRASE, JEANNIE ..... OAK GROVE, MO	9/20/2005
CRAWFORD, TODD ..... MARINE ON ST. CROIX, MN	9/20/2005
CROWDER, MICHAEL ..... SAN MANUEL, AZ	9/20/2005
CUNNEEN, PETER ..... TARRYTOWN, NY	9/20/2005
CURTIS, DORIS ..... WINCHESTER, KY	9/20/2005
DALTON, TERRY ..... BIRMINGHAM, AL	9/20/2005
DANGL, KURT ..... SARASOTA, FL	9/20/2005
DARLINGTON, JASON ..... CLINTON, UT	9/20/2005
DARNELL, CHRISTIE ..... FARMINGTON, KY	9/20/2005
DAVIS, TONYA ..... BONIFAY, FL	9/20/2005
DEAN, KATHLEEN ..... PHOENIX, AZ	9/20/2005
DERAMUS, MELANIE ..... MONTGOMERY, AL	9/20/2005
DETWEILER, MICHAEL ..... SECOR, IL	9/20/2005
DICKENSON, MICHAEL ..... COOKEVILLE, TN	9/20/2005
DODENHOFF, KATHRYN ..... ROCKLAND, MA	9/20/2005
DONNELL, JANICE ..... RIDGEWAY, IL	9/20/2005
DUNCAN, KIMBERLY ..... CAMDEN, TN	9/20/2005
DYER, LEANNE ..... TRENTON, KY	9/20/2005
EDMUND, ANTHONY ..... CHANDLER, AZ	9/20/2005
EICHELBERGER, ANGELA ..... PINNACLE, NC	9/20/2005
ELLIOTT, JOHN ..... DENVER, CO	9/20/2005
EMRICK, TINA ..... FRANKFORT, KY	9/20/2005
ENRIQUE, YVETTE ..... CARSON, CA	9/20/2005
ESCOBAR, GLADYS ..... BUENA PARK, CA	9/20/2005
EVENSEN, VERNA ..... PHOENIX, AZ	9/20/2005
EVERY, MARY ..... ROCK HILL, SC	9/20/2005
EYRE, COLLEEN ..... CEDAREDGE, CO	9/20/2005
FANDERS, BRIAN ..... OMAHA, NE	9/20/2005
FARRELL, JANET ..... WORCESTER, MA	9/20/2005
FEAZELL, SANDRA ..... PALM SPRINGS, CA	9/20/2005
FILLYAW, WALTER ..... PANAMA CITY, FL	9/20/2005
FLANAGAN, MARY ..... LITTLETON, CO	9/20/2005
FLEMING, MAXWELL ..... WEWAHITCHKA, FL	9/20/2005
FLOOD, BARBARA ..... BAILEY, CO	9/20/2005
FRANCIS, LAURA ..... MANSFIELD, MA	9/20/2005
FRANKLIN, KRYSTAL ..... SAN BERNARDINO, CA	9/20/2005
FREEHAUF-NORTON, VESTA ..... FARGO, ND	9/20/2005
GADSBY, VYNOLA ..... CLAREMONT, CA	9/20/2005
GALLAGHER, WALTER ..... SUMMIT, NJ	9/20/2005
GARRISON, PATRICIA ..... LOUISVILLE, KY	9/20/2005
GILL, PATRICIA ..... INDIANAPOLIS, IN	9/20/2005
GORSUCH, KRISTEN ..... PITTSBURGH, PA	9/20/2005
GRAJEDA, LUPE ..... TUCSON, AZ	9/20/2005
GRAVES, RICHARD ..... SALT LAKE CITY, UT	9/20/2005
GREENE, MICHAEL ..... JONESBOROUGH, TN	9/20/2005
GRIFFITH, PAMELA ..... NEVADA, IA	9/20/2005
GRIMM, CHADWICK ..... PACIFIC, MO	9/20/2005
GROSSMAN, WARREN ..... SHAKER HEIGHTS, OH	9/20/2005
GUTIERREZ, PATRICIA ..... ARMONA, CA	9/20/2005
HARBECKE, LINDA ..... SEBRING, FL	9/20/2005
HARDING, MERIJANE ..... CLEAR CREEK, IN	9/20/2005
HATFIELD, LEWAN ..... SHELTON, WA	9/20/2005
HAWRYLAK, AMY ..... PALMER, AK	9/20/2005
HAYES, SHELLI ..... EPPING, ND	9/20/2005
HEAD-PELE, IRENE ..... SAN DIEGO, CA	9/20/2005
HENSHAW, PATTY ..... EVANSVILLE, IN	9/20/2005
HILL, SALLY ..... MATTHEWS, NC	9/20/2005
HINKLE, RICHARD ..... MAYWOOD, IL	9/20/2005
HITT, LINDA ..... DUNNELLON, FL	9/20/2005
HSU, GEORGE ..... ELGIN, ND	9/20/2005
HUBBARD, CONNIE ..... OCEAN SPRINGS, MS	9/20/2005
HULL, CYNTHIA ..... BOISE, ID	9/20/2005
HYMAN, JESSICA ..... HOUSTON, TX	9/20/2005
ILIOU, CLAUDE ..... PORT CHARLOTTE, FL	9/20/2005
INGLE, JANICE ..... AVON, IN	9/20/2005
INSEL, JONATHAN ..... EAST GREENBUSH, NY	9/20/2005
ISAACS, VICTOR ..... SCOTT CITY, MO	9/20/2005
ISENBERG, REBECCA ..... FOWLER, IN	9/20/2005
JAQUES, DIONNE ..... ST. GEORGE, UT	9/20/2005
JENNINGS, VERA ..... SACRAMENTO, CA	9/20/2005
JOHNSON, KELLY ..... JOPLIN, MO	9/20/2005
JOHNSON, SHEMECKA ..... SELMA, AL	9/20/2005
JOHNSTON, MARY ..... WALPOLE, MA	9/20/2005
JONES, DONNA ..... LAKE JACKSON, TX	9/20/2005
JONES, GARY	9/20/2005

Subject name, address	Effective date
DOTHAN, AL	
KELLEY, ARTINA	9/20/2005
LANSING, MI	
KING, NANCY	9/20/2005
FLORISSANT, MO	
KIRKHAM, JAN	9/20/2005
COACHELLA, CA	
KLARICH, RENA	9/20/2005
NASHVILLE, TN	
KLOSE, ROGER	9/20/2005
PEORIA, AZ	
KOUZBARI, MELANIE	9/20/2005
TULSA, OK	
KREITEL, TRACY	9/20/2005
GRAND FORKS, ND	
KUELLENBERG, CAROLINE	9/20/2005
MONTE VISTA, CO	
LAMBERT, SANDRA	9/20/2005
WEST JEFFERSON, NC	
LANE, WILLIAM	9/20/2005
BILLERICA, MA	
LANGE, JULIE	9/20/2005
WEBSTER, MA	
LANIER, DONNA	9/20/2005
MULBERRY, FL	
LATHRAM, MARCIA	9/20/2005
LOUISVILLE, KY	
LAWSON, LINDA	9/20/2005
FAIRLAND, OK	
LEAK, SCOTT	9/20/2005
REDDING, CA	
LEE, JANET	9/20/2005
INDIANAPOLIS, IN	
LEE, SCHAWNEEQUA	9/20/2005
PORT ARTHUR, TX	
LESSNER, HOWARD	9/20/2005
MIAMI, FL	
LIVELY, MEGAN	9/20/2005
SARDIS, OH	
LONG, JACQUIELINE	9/20/2005
ROXBORO, NC	
LOPEZ, ANA	9/20/2005
MAYWOOD, CA	
MACCABEE, NETA	9/20/2005
NEW YORK, NY	
MAISH, JAMES	9/20/2005
AUGUSTA, GA	
MARTIN, PAMELA	9/20/2005
XENIA, OH	
MARTIN, SUSAN	9/20/2005
PHILADELPHIA, PA	
MARTINEZ, JO	9/20/2005
LOS ANGELES, CA	
MAUDLIN, RIKKI	9/20/2005
TUCSON, AZ	
MAURO, MARIANNE	9/20/2005
E BRUNSWICK, NJ	
MCCORMACK, CHERYL	9/20/2005
SPRINGFIELD, MO	
MCGUIRE, SCOTT	9/20/2005
MURRAY, UT	
MELTON, KERRI	9/20/2005
PINE BLUFF, AR	
MESSINA, JESSICA	9/20/2005
PHOENIX, AZ	
MILES, DIANE	9/20/2005
MAX, ND	
MILES, JANET	9/20/2005
MINOT, ND	
MURPHY, CHARLES	9/20/2005
STREATOR, IL	
MYERS, JEAN	9/20/2005
LODI, CA	
NAVA, HECTOR	9/20/2005
SAN ANTONIO, TX	
NELSON-FORBES, VICKI	9/20/2005
SAINT ANTHONY, IA	
NESBY, KIMBERLY	9/20/2005
MONTGOMERY, AL	
NEWCOMB, ROGER	9/20/2005
MURRAY, UT	
NEWTON, ED	9/20/2005
SCOTTSDALE, AZ	
NICHOLAS, HUNTER	9/20/2005
BISMARCK, ND	
NONU, SOOGA	9/20/2005
KEARNS, UT	
O'DONOGHUE, TINA	9/20/2005
ORANGE PARK, FL	
ORR, LARRY	9/20/2005
MURRAY, KY	
OVERTON, LUANNE	9/20/2005
GREENEVILLE, KY	
PANETTIERE, PAULA	9/20/2005
THORSBY, AL	
PARKER, TIMOTHY	9/20/2005
EAGER, AZ	
PARKER, TYANA	9/20/2005
MESA, AZ	
PARTNER, MICHELLE	9/20/2005
WEAVER, AL	
PATE, MARY	9/20/2005
MOBILE, AL	
PELTO, STEPHEN	9/20/2005
KINCHELOE, MI	
PERRY, JENNIFER	9/20/2005
EIGHT MILE, AL	
PETOELLO, ANNE	9/20/2005
NEW YORK, NY	
POSTAJIAN, JON	9/20/2005
GLENDALE, CA	
PRITCHARD, CHARLES	9/20/2005
BETTENDORF, IA	
PUCCI, BRIAN	9/20/2005
PINE BROOK, NJ	
RAKOFF, AMY	9/20/2005
HOPEWELL JUNCTION, NY	
RAMKE, REBECCA	9/20/2005
PORT NECHES, TX	
RATLIFF, JAMIE	9/20/2005
SPRING HILL, FL	
READER, MELISSA	9/20/2005
BOCA RATON, FL	
REASER, SUSAN	9/20/2005
PUYALLUP, WA	
REDDOCK, LYNDA	9/20/2005
PONTE VEDRA BEACH, FL	
REDMAN, PAMELA	9/20/2005
DENVER, CO	
REED, MARK	9/20/2005
LAS VEGAS, NV	
ROBERTS, ELEANOR	9/20/2005
PROSPECT PARK, PA	
RODRIGUEZ, EDWIN	9/20/2005
CHULA VISTA, CA	
ROMANO, CATHY	9/20/2005
HOUSTON, TX	
ROTHSTEIN, BINYAMIN	9/20/2005
BALTIMORE, MD	
RUSCH, JAMIE	9/20/2005
OMAHA, NE	
SALGADO, KIMBERLY	9/20/2005
LAND O LAKES, FL	
SANCHEZ, IDA	9/20/2005
PHOENIX, AZ	
SANCHEZ, MARTIN	9/20/2005
WATSONVILLE, CA	
SAULTER, CAROLYN	9/20/2005
HODGES, AL	
SAVAGE, MILDRED	9/20/2005
INDIANAPOLIS, IN	
SCHIERBAUM, DONNA	9/20/2005
FT WALTON BEACH, FL	
SCHOLL, DARLA	9/20/2005
TEMPE, AZ	
SCHOUBROEK, MELISSA	9/20/2005
HOUSTON, TX	
SCHUMACHER, DENYSE	9/20/2005
CEDAR FALLS, IA	
SERGI, ELIZABETH	9/20/2005
PLEASANT HILL, IA	
SIMMONS, MICHELLE	9/20/2005
BRADENTON, FL	
SKAGGS, TAMMY	9/20/2005
GLENDALE, AZ	
SKIDMORE, AMY	9/20/2005
WESTLAND, MI	
SMITH, AMBER	9/20/2005
MEMPHIS, TN	
SMITH, JILLIAN	9/20/2005
COLLINWOOD, TN	
SMITH, JIMMY	9/20/2005
CHICAGO, IL	
SMITH, KAREN	9/20/2005
CAPE CORAL, FL	
SMITH, REBECCA	9/20/2005
MESA, AZ	
SORENSEN, FRED	9/20/2005
PHOENIX, AZ	
SPAULDING, BRADLEY	9/20/2005
VESTAL, NY	
SPEARMAN, ROSE	9/20/2005
PROVIDENCE, RI	
SPIVEY, CHERYL	9/20/2005
ERLANGER, KY	
SPRONK, NICOLE	9/20/2005
ROY, UT	
STABLER, MITZI	9/20/2005
WHATLEY, AL	
STAGGS, STACEY	9/20/2005
PLATTE CITY, MO	
STEINMETZ, MALIA	9/20/2005
SUNMAN, IN	
STEPHENSON, DAVID	9/20/2005
UTICA, NY	
STOCKER, MICHAEL	9/20/2005
DES MOINES, IA	
STROWBRIDGE, MELISSA	9/20/2005
ORLANDO, FL	
STUART, JASON	9/20/2005
YUMA, AZ	
STURDIVANT, PATRICIA	9/20/2005
PUNTA GORDA, FL	
SUSTER, STUART	9/20/2005
N SALEM, NY	
SUTTER, DEANNA	9/20/2005
BISMARCK, ND	
SYX, RANDAL	9/20/2005
BIRMINGHAM, AL	
TANNER, DAVID	9/20/2005
PLYMOUTH, IN	
TANNER, WADE	9/20/2005
ELIZABETHTON, TN	
THOMAS, ANGELINA	9/20/2005
CARBON HILL, AL	
THOMPSON, AMY	9/20/2005
MARYSVILLE, OH	
TICE, LINDSEY	9/20/2005
BRIDGETON, NJ	

Subject name, address	Effective date
TIJERINA, ANNA ..... HARLINGEN, TX	9/20/2005
TINCHER, TREVA ..... STANFORD, KY	9/20/2005
TODD, ELLEN ..... NEW PORT RICHEY, FL	9/20/2005
TORRES, FERNANDO ..... MADISON, TN	9/20/2005
TROIANO, WILLIAM ..... BRIGHTON, MA	9/20/2005
TUCKER, MARK ..... TERRE HAUTE, IN	9/20/2005
TUNIS, SEAN ..... BALTIMORE, MD	9/20/2005
TYSON, BARBARA ..... CHICAGO, IL	9/20/2005
UBSDELL, DIANA ..... BELLEAIR BLUFFS, FL	9/20/2005
UFFELMAN, NORMA ..... GAINESVILLE, FL	9/20/2005
VALLA, WENDY ..... WILLISTON, ND	9/20/2005
WEBB, SAMANTHA ..... PEARLAND, TX	9/20/2005
WELCH, LUCIUS ..... WEST PALM BEACH, FL	9/20/2005
WERRE, STACY ..... BISMARCK, ND	9/20/2005
WHEELER, TAMRA ..... SANDY HOOK, KY	9/20/2005
WHITE, AMY ..... TUCSON, AZ	9/20/2005
WHITTEN, JUDY ..... HUMBLE, TX	9/20/2005
WILLIAMS, RONALD ..... LAS VEGAS, NV	9/20/2005
WILSON, CARROLL ..... JONESBORO, IL	9/20/2005
WISSINGER, WILLIAM ..... HOBE SOUND, FL	9/20/2005
WOOD, AMANDA ..... BOURBONNAIS, IL	9/20/2005
WRIGHT, DUFF ..... GERMANTOWN, TN	9/20/2005
YOUNG, LESLIE ..... PHOENIX, AZ	9/20/2005
ZARAGOZA, YESENIA ..... AVONDALE, AZ	9/20/2005
FRAUD/KICKBACKS/PROHIBITED ACTS/ SETTLEMENT AGREEMENTS	
CARESOUTH CLINIC, PC ..... JACKSON, TN	7/22/2005
FULCRUM SERVICES, INC .... TAMPA, FL	11/15/2002
G S CARE, CORP ..... TAMPA, FL	11/15/2002
GLOBAL MOBILITY, INC ..... LARGO, FL	11/15/2002
GOLDSTAR HEALTHCARE, INC ..... TAMPA, FL	11/15/2002
NORTH STAR INDUSTRIES, INC ..... LUTZ, FL	11/15/2002
NORTH STAR OIL AND GAS, INC ..... SMITHVILLE, WV	11/15/2002
TRIDENT DISTRIBUTORS, INC ..... TAMPA, FL	11/15/2002
OWNED/CONTROLLED BY CONVICTED ENTITIES	
CALIFORNIA COSMETIC DENTISTRY ..... LOS ANGELES, CA	9/20/2005
CESAR E PEREZ, MD, PA ..... ST PETERSBURG BEACH, FL	9/20/2005
COSEMETIC PLASTIC SURGERY CENTER OF SARASOTA ..... SARASOTA, FL	9/20/2005
SUNG WOOK KIM, DDS, INC LOS ANGELES, CA	9/20/2005
SUNRISE CENTER, INC ..... SHAWNEE, KS	9/20/2005
THOMAS R GONZALES, DDS, LTD ..... LAS VEGAS, NV	9/20/2005
DEFAULT ON HEAL LOAN	
DANIEL, RONALD ..... DUNCANVILLE, TX	9/20/2005
FISCHER, ERNIE ..... GRAND RAPIDS, MI	9/20/2005
GALLEBERG, DAVID ..... FOREST LAKE, MN	8/2/2005
HECKLER, RODNEY ..... WHEATON, IL	8/11/2005
THOMPSON, RUSSELL ..... HASLETT, MI	9/20/2005
OWNERS OF EXCLUDED ENTITIES	
SPENCER, EDWARD ..... KILLEEN, TX	9/20/2005

Dated: September 1, 2005.

Katherine B. Petrowski,

Director, Exclusions Staff, Office of Inspector General.

[FR Doc. 05–18379 Filed 9–15–05; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIDCR Special Grants Review Committee, 06–01, Review Ks and R03s.

Date: October 20–21, 2005.

Time: 8 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Soheyla Saadi, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr. Rm 4AN32A, National Inst of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, 301–594–4805, *saadisoh@nidcr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: September 9, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–18391 Filed 9–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Research Program Projects (P01s).

Date: October 7, 2005.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Hawthorne Suites Hotel, 300 Meredith Drive, Research Triangle Park, NC 27713.

Contact Person: Janice B. Allen, PhD, Scientific Review Administrator, Scientific

Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Service, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, 919/541–7556.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Research Program Project (P01's).

Date: October 7, 2005.

Time: 12:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hawthorne Suites Hotel, 300 Meredith Drive, Research Triangle Park, NC 27713.

Contact Person: Janice B. Allen, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Service, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, 919/541–7556.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: September 9, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–18392 Filed 8–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Sciences Special Emphasis Panel, Review of Hazardous Substances Basic Research Grants Programs (P42s).

Date: October 17–20, 2005.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Sally Eckert-Tilotta, PhD, Scientific Review Administrator, National Inst. of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, Research Triangle Park, NC 27709, 919/541–1446, *eckertt1@niehs.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: September 9, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–18393 Filed 9–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDCD.

The meeting will be open to the public as indicated below, the attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Deafness and Other Communication Disorders, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDCD.

Date: October 21, 2005.

Open: 7:30 a.m. to 8 a.m.

Agenda: Reports from Institute staff.

Place: National Institutes of Health, 5 Research Court, Rockville, MD 20852.

Closed: 8 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 5 Research Court, Rockville, MD 20852.

Contact Person: Robert J. Wenthold, PhD, Director, Division of Intramural Research, National Institute on Deafness and Other Communication Disorders, 5 Research Court, Room 2B28, Rockville, MD 20852, 301–402–2829.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 9, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–18394 Filed 9–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

Date: November 9, 2005.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Silver Spring Downtown, 8506 Fenton Street, Silver Spring, MD 20910.

Contact Person: Bonnie Dunn, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd., Suite 920, Bethesda, MD 20892, (301) 496–8633, *dunnbo@mail.nih.gov*.

Dated: September 9, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–18395 Filed 9–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Adenosine Receptors Unsolicited P01.

Date: October 3, 2005.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Sujata Vijh, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 594–0985, *vijhs@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 9, 2005.

Anthony M. Coelho, Jr.

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–18396 Filed 9–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Biobehavioral and Behavioral Sciences Subcommittee Biobehavioral and Behavioral Sciences.

Date: October 20–21, 2005.

Time: October 20, 2005, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Lombardy, 2019 Pennsylvania Avenue, NW., Washington, DC 20006.

Time: October 21, 2005, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Lombardy, 2019 Pennsylvania Avenue, NW., Washington, DC 20006.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 9, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–18397 Filed 9–15–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Vestibular Research Center.

Date: October 12, 2005.

Time: 1:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sheo Singh, PhD., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Review of Small Grant Applications.

Date: November 2, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Shiguang Yang, PhD., Scientific Review Administrator, Division of Extramural Activities, NIDCD, NIH, 6120

Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 7, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–18399 Filed 9–15–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Myeloid Leukemia.

Date: September 27, 2005.

Time: 3:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eva Petrakova, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–1716, *petrakoe@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, EAR.

Date: October 4, 2005.

Time: 8:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, 301–435–1249, *kimmj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, EAR.

Date: October 4, 2005.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, 301–435–1249, *kimmj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, EAR.

Date: October 4, 2005.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, (301) 435–1249, *kimmj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Urological Sciences Small Business Applications.

Date: October 4, 2005.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: M. Chris Langub, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7814, Bethesda, MD 20892, (301) 496–8551, *langubm@csr.nih.gov.*

Name of Committee: Respiratory Sciences Integrated Review Group, Lung Cellular, Molecular, and Immunobiology Study Section.

Date: October 5–6, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Memory.

Date: October 5, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1713, *melchiorc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical and Intergrative Diabetes and Obesity.

Date: October 6–7, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Nancy Sheard, SCD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–E, MSC 7892, Bethesda, MD 20892, (301) 435–1154, *sheardn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, COX–2 Inhibitors for Head and Neck Cancer.

Date: October 7, 2005.

Time: 9 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Morris I. Kelsey, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–1718, *kelseym@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Genetics of Health and Disease Study Section.

Date: October 10–11, 2005.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Atherosclerosis and Inflammation of thet Cardiovascular System Study Section.

Date: October 11–12, 2005

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Auditory System Study Section.

Date: October 11–12, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Edwin C. Clayton, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5095C, MSC 7844, Bethesda, MD 20892, (301) 402–1304, *claytone@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Sensorimotor Integration Study Section.

Date: October 11, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institues of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250, *bishopj@csr.nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Biodata Management and Analysis Study Section.

Date: October 11–12, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Marc Rigas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7826, Bethesda, MD 20892, 301–402–1074, *rigasm@csr.nih.gov*.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Biobehavioral Regulation, Learning and Ethology Study Section.

Date: October 11–12, 2005.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Luci Roberts, PhD, Scientific Review Administrator, Center for Scientific Review, National institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, *roberlu@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bone and Cartilage Imagining Study Section.

Date: October 11, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eileen W Bradley, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5100, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Development of Anti-Cancer Agents.

Date: October 11, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301–435–1211, *quadris@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular Cardiomyopathy.

Date: October 11, 2005.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892, 301–435–1850, *dowellr@csr.nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Pathogenic Eukaryotes Study Section.

Date: October 12–14, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3194, MSC 7808, Bethesda, MD 20892, (301) 435–1146, *hickmanj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowship Review: Sensory, Motor and Cognitive Neuroscience.

Date: October 12, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250, *bishopj@csr.nih.gov*.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Surgery, Anesthesiology and Trauma Study Section.

Date: October 12–13, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Weihua Luo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, 301–435–1170, *luow@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, DNA Repair Processes.

Date: October 12, 2005.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, (301) 435–1211, *quadris@csr.nih.gov*.

Name of Committee: Health of the Population Integrated Review Group, Nursing Science: Adults and Older Adults Study Section.

Date: October 13–14, 2005.

Time: 8 a.m. to 5 p.m

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Tysons Corner, 1960 Chain Bridge Road, McLean, VA 22102.

Contact Person: Gertrude K. McFarland, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, (301) 435–1784, *mcfarlag@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Drug Discovery and Mechanisms of Antimicrobial Resistance.

Date: October 13–14, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Tera Bounds, PhD, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, (301) 435–2306, *boundst@csr.nih.gov*.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Hypertension and Microcirculation Study Section.

Date: October 13–14, 2005.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Ai-Ping Zou, PhD, M.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, (301) 435–1777, *zouai@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neurotransporters, Receptors, and Calcium Signaling Section.

Date: October 13–14, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter B. Guthrie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Cardiovascular and Sleep Epidemiology.

Date: October 13–14, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: J Scott Osborne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782, *osbornes@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Hypertension and Oxygenation in Cardiovascular System.

Date: October 14, 2005.

Time: 9 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195, *sur@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 8, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–18398 Filed 9–15–05; 8:45 am]

BILLING CODE 4140–01–

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Proposed Project: Survey of Single State Authorities Regarding the HIV Set-Aside of the Substance Abuse Prevention and Treatment Block Grant—NEW

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Substance Abuse Treatment (CSAT) administers the Substance Abuse Prevention and Treatment (SAPT) Block Grant. This is a major source of funding for substance abuse activities in 60 jurisdictions, including all States and Territories. As part of the SAPT Block Grant, States with an AIDS case rate of 10 per 100,000 of population are required to set-aside a portion of SAPT Block Grant funding for early Human Immunodeficiency Virus (HIV) intervention. States that qualify are required to expend 2–5 percent of their yearly SAPT Block Grant funding on HIV Early Intervention Services (EIS) projects.

The purpose of the survey is to assess the status of HIV Services in substance abuse treatment systems in the States and Territories; including how HIV Set-Aside funds are being utilized, and what results are being accomplished through EIS, including counseling, testing, and treatment, and staff and program development. A questionnaire will be sent to the director of each Single State Authority for the SAPT Block Grant in the 60 States and Territories, with responses expected over a two-week period.

Below is the table of the estimated total burden hours:

Respondent	Number of respondents	Number of responses per respondent	Average burden hour	Estimated total burden (hours)
State Manager	60	1	1	60

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 71–1045, One Choke Cherry Road, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: September 9, 2005.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 05–18405 Filed 9–15–05; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–43]

Notice of Submission of Proposed Information Collection to OMB; Request for Credit Approval of Substitute Mortgagor

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

A buyer may assume an FHA-insured mortgage by becoming the substitute mortgagor through the credit approval process. Prior to releasing a seller from liability on the mortgage note or for mortgages after December 15, 1989, HUD or a Direct Endorsement (DE) lender must review the credit of the assumer and record the approval.

DATES: *Comments Due Date:* October 17, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0036) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh

Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Request for Credit Approval of Substitute Mortgagor.

OMB Approval Number: 2502–0036.

Form Numbers: HUD–92210, HUD–92210.1.

Description of the Need for the Information and Its Proposed Use: A buyer may assume an FHA-insured mortgage by becoming the substitute mortgagor through the credit approval process. Prior to releasing a seller from liability on the mortgage note or for mortgages after December 15, 1989, HUD or a Direct Endorsement (DE) lender must review the credit of the assumer and record the approval.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	600	4		1		2,400

Total Estimated Burden Hours: 2,400.

Status: Extension of a currently approval collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 12, 2005.

Donna L. Eden,

Director, Office of Policy and E-Government, Office of the Chief Information Officer.

[FR Doc. E5–5030 Filed 9–15–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–44]

Notice of Submission of Proposed Information Collection to OMB; Single Family Mortgage Insurance on Hawaiian Homelands

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection documents the native status of Hawaiian borrowers to meet statutory requirements of the single-family mortgage insurance program for Hawaiian Homelands and to assist borrowers in resolving defaults.

DATES: Comments Due Date: October 17, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0358) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Single Family Mortgage Insurance on Hawaiian Homelands.

OMB Approval Number: 2502–0358.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: This information collection documents the native status of Hawaiian borrowers to meet statutory requirements of the single-family mortgage insurance program for Hawaiian Homelands and to assist borrowers in resolving defaults.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden	504	2.9		1.19		1,744

Total Estimated Burden Hours: 1,744.

Status: Extension of a currently approval collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 12, 2005.

Donna L. Eden,

Director, Office of Policy and E-Government, Office of the Chief Information Officer.

[FR Doc. E5–5031 Filed 9–15–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–37]

Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, under utilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: Effective September 16, 2005.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: September 8, 2005.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 05–18172 Filed 9–15–05; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take of Golden-Cheeked Warbler

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Applicant, White Water Springs, L.L.C., has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–110131–0. The requested permit, which is for a period of 30 years, would authorize incidental take of the endangered golden-cheeked warbler (Dendroica chrysoparia). The proposed take would occur as a result of the construction and operation of a residential development on 1,758-acres (717 hectares) of the White Water Springs property, Burnet County, Texas. The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy or non-jeopardy to the species and a decision pursuant to the National Environmental Policy Act (NEPA) will not be made until at least 60 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: To ensure consideration, written comments must be received on or before November 15, 2005.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by a written or telephone request to Sybil Vosler, U.S. Fish and Wildlife Service, Ecological Services Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057 extension 225). Documents will be available for public inspection by written request or by appointment only during normal business hours (8 a.m. to 4:30 p.m.) at the U.S. Fish and Wildlife Service Office, Ecological Services Office, 10711 Burnet Road, Suite 200, Austin, Texas. Data or comments concerning the application and EA/HCP should be submitted in writing to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Office, Austin, Texas at the above address. Please refer to permit number TE–110131–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Sybil Vosler, Ecological Services Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057 extension 225).

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: White Water Springs, L.L.C., plans to construct a residential development on 1,758-acres of the White Water Springs property, Burnet County, Texas. This action would adversely affect 369.1 acres (148.8 hectares) of oak-juniper woodland resulting in take of the golden-cheeked warbler. The Applicant proposes to compensate for this incidental take of the golden-cheeked warbler by contributing $300,000 to a conservation entity for use in the purchase and preservation of golden-cheeked warbler habitat within the acquisition area of the Balcones Canyonlands National Wildlife Refuge and by preserving 20.7 acres (8.3 hectares) of habitat on-site which will be managed in perpetuity for the benefit of the golden-cheeked warbler.

Larry G. Bell,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 05–18406 Filed 9–15–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Fiscal Year 2006 Landowner Incentive Program (Non-Tribal Portion) for States, Territories, and the District of Columbia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The Service is requesting comments on the Landowner Incentive Program (LIP) criteria for awarding conservation grants to States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and the Territories of Guam, the United States Virgin Islands, and American Samoa (all hereafter referred to collectively as States). Comments are requested on a change in the funding cap for States and a revision of the national Review Team Ranking Criteria Guidance.

DATES: The Service must receive your comments no later than October 31, 2005.

ADDRESSES: Interested parties are required to submit their comments in two formats: *Electronic* (e.g., Word, or PDF files) *and hard copy*. Electronic files must be sent to *Genevieve_LaRouche@fws.gov*. In addition, hard copy of comments must be hand-delivered, couriered; or mailed to the Service's Division of Federal Assistance at 4401 North Fairfax Drive—Mailstop MBSP 4020, Arlington, VA 22203–1610.

FOR FURTHER INFORMATION CONTACT: Genevieve Pullis LaRouche, U.S. Fish and Wildlife Service, Division of Federal Assistance, 4401 North Fairfax Drive—Mailstop MBSP 4020, Arlington, VA 22203–1610; telephone, 703–358–1854; e-mail, *Genevieve_LaRouche@fws.gov*.

SUPPLEMENTARY INFORMATION: The Service is soliciting comments from individuals, government agencies, environmental groups, or any other interested parties concerning the proposed revisions to the LIP Tier 2 ranking criteria.

Background

In 2004 we invited comments from the State Fish and Wildlife agencies regarding proposal ranking criteria the Service uses in evaluating Tier-2 grants for LIP. Based on those comments, some revisions to the ranking criteria were made prior to issuance of the request for proposals (RFP) for Fiscal Year (FY) 2005 Tier 2 grants (70 FR 7959, February 16, 2005). Following review of the FY 2005 Tier 2 proposals, we made further changes to the Grant Proposal National Review Team Ranking Criteria Guidance. These changes were based upon the 2004 comments received from the States, further comment regarding experience using the FY 2005 criteria revisions, and our experience operating this program for 4 years. In the latest revisions to the criteria, we revised the criteria format to be consistent with the standard grant proposal format (522 FW 1.3C), added a new criterion regarding expenditure of previously awarded funds, clarified existing criteria, and revised the maximum funding a State may receive to 3 percent. We hope that these changes will provide greater clarity to the selection criteria and improve the overall fairness of the approval process.

Comments are requested on the following proposed changes-

A. We propose to revise the maximum funding a single State may receive from 5 percent to 3 percent of the total awarded to the States in a fiscal year.

B. We propose the following revisions to the National Review Team Ranking Criteria Gudiance for LIP Tier 2 Grant Proposals:

Landowner Incentive Program (LIP) National Review Team Ranking Criteria Guidance for Tier 2 Grant Proposals

State: _____

1. OVERALL—Proposal provides clear and sufficient detail to describe the State's use of awarded funds from the LIP, and the State's program has high likelihood for success. (5 points total)
   a. Proposal is easy to understand and contains all elements described in 522 FW 1.3C: Need; Objective; Expected Results and Benefits; Approach; and Budget. (0–2 pts)
   b. Proposal, taken as a whole, demonstrates that the State can implement a Landowner Incentive Program that has a high likelihood for success in conserving at-risk species on private lands (e.g., the program has agency support and staff commitment; administrative processes are already established including the ability and authority to enter into financial agreements with private landowners; the program has had past successes, etc). (0–3 pts)
2. NEED—Proposal describes the urgency for implementing a LIP. States should describe how their LIP is a part of a broader scale conservation effort at the State or regional level. (6 points total)
   a. Proposal clearly describes the urgency of need for a LIP to benefit at-risk species in the State. (0–2 pts)
   b. Proposal clearly describes conservation needs for targeted at-risk species that relate directly to objectives and conservation actions described in other sections of the proposal. (0–2 pts)
   c. Proposal provides specific examples of how the State's LIP program will address conservation needs for at-risk species identified at the national, State, and regional level [e.g., Comprehensive Wildlife Conservation Strategy (CWCS), recovery plans, etc.]. (0–2 pts)
3. OBJECTIVES—Proposal provides clear objectives that specify fully what is to be accomplished (5 points total)
   The objectives of the proposal describe discrete, obtainable, and quantifiable outcomes to be accomplished (e.g., the number of acres of wetlands, or other types of habitat, and stream miles to be restored, and/or the number of at-risk species whose status within the State will be improved). (0–5 pts)
4. EXPECTED RESULTS AND BENEFITS—Proposal clearly describes how the activities will benefit targeted at-risk species. (14 points total)
   a. Proposal describes by name the species-at-risk to benefit from the proposal. (0–1 pt)
   b. Proposal identifies habitat requirements for these targeted at-risk species. (0–2 pts)
   c. Proposal describes conservation actions to be undertaken that will address current threats to the at-risk species and their habitats. (0–3 pts)
   d. Proposal explains how conservation actions will result in benefits. (0–3 pts)
   e. Proposal describes the short-term benefits for at-risk species to be achieved within a 5- to 10-year period. (0–2 pts)
   f. Proposal describes the long-term benefits for at-risk species to be achieved beyond 10 years. (0–3 pts)
5. APPROACH—Proposal clearly describes how program objectives, contractual and fiscal management, and fund distribution will be accomplished and monitored. (24 points total)
   Program Implementation
   a. Proposal describes the types of conservation projects and/or activities eligible for funding. (0–2 pts)
   b. Proposal describes how conservation projects and/or activities will implement portions of conservation plans at a local, State, regional, or national scale, including the CWCS. (0–2 pts)
   Fiscal Administrative Procedures—Proposal describes adequate management systems for fiscal and contractual accountability.
   c. Processes to ensure fiscal accountability between the State and participating landowners are clearly described. (0–2 pts)
   d. Standards and processes to ensure contractual accountability between the State and the participating landowner are clearly described. (0–2 pts)
   e. Proposal indicates that the State has an approved legal instrument to enter into agreements with landowners. (0–1 pt)
   System for Fund Distribution—Proposal describes the State's fair and equitable system for fund distribution.
   f. System described is inherently fair and free from bias. (0–2 pts)
   g. Proposal describes State's ranking criteria and process to select projects and

includes a ranking form with criteria and assigned points. (0–3 pts)

h. States' ranking criteria are adequate to prioritize projects based on conservation priorities identified in proposal. (0–2 pts)

i. Project proposals will be (or were) subject to an objective ranking procedure (*e.g.,* internal ranking panel, diverse ranking panel comprising external agency members and/or members of the public, computerized ranking model). (0–2 pts)

Monitoring—Proposal describes State's biological and compliance monitoring plan for LIP including annual monitoring and evaluation of progress toward desired program objectives, results, and benefits.

j. Proposal describes compliance monitoring that will ensure accurate and timely evaluation to determine that landowners have completed agreed-upon practices in accordance with landowner agreement, and that includes the process for addressing landowners who fail to comply with agreements. (0–3 pts)

k. Proposal describes biological monitoring that will ensure species and habitats are monitored and evaluated adequately to determine the effectiveness of LIP-sponsored activities (Items to address in monitoring may include establishing baselines, monitoring standards, establishing timeframes for conducting monitoring activities, and setting expectations for monitoring.) (0–3 pts)

6. BUDGET—Proposal clearly identifies funds for use on private lands, identifies percentage of cost match, and identifies past funding awards. (14 points total)

a. Proposal describes the percentage of the State's total LIP Tier–2 program fund identified for use on private lands as opposed to staff and related administrative support (admin). (4 points total)

0 points if this is not addressed or admin is >35%
1 point if admin is >25 to 35%
2 points if admin is >15 to 25%
3 points if admin is >5 to 15%
4 points if admin is 0 to 5%

Use on private lands includes all costs directly related to implementing on-the-ground projects with LIP funds. Activities considered project use include: Technical guidance to landowner applicants; habitat restoration, enhancement, or management; purchase of conservation easements (including costs for appraisals, land survey, legal review, etc); biological monitoring of Tier 2 project sites; and performance monitoring of Tier 2 projects. Staffing costs should only be included in this category when the staff-time will directly relate to implementation of a Tier 2 project. Standard Indirect rates negotiated between the State and Federal government should also be included under Project Use.

Staff and related administrative support include outreach (presentations, development or printing of brochures, etc.); planning; research; administrative staff support; staff supervision; and overhead charged by subgrantees unless the rate is no approved negotiated rate for Federal grants.

b. Proposal identifies the percentage of nonfederal cost sharing. (3 points total). (Note: I.T.=Insular Territories)

0 points if nonfederal cost share is 25%
1 point if nonfederal cost share is >25% to 30% (>0 to 25% I.T.)
2 points if nonfederal cost share is > 30% to 35% (>25 to 30% I.T.)
3 points if nonfederal cost share is >35% (>30% I.T.)

c. Has applicant received Tier 2 grant funds previously? (2 points total)

0 points if State has received Tier 2 funds previously or has not applied for Tier-2 funds previously
1 point if State has applied 2 of 3 previous years and no funds were awarded
2 points if State has applied 3 previous years and no funds were awarded

d. Proposal identifies percentage of previously awarded funds (exclude last fiscal year's awarded funds) that have been expended or encumbered (landowners that are under signed contract to conduct on-the-ground projects) (5 points total)

0 points if less than 50% of the funds are expended for on-the-ground project
1 point if >50% of the funds are expended for on-the-ground project
2 points if >60% of the funds are expended for on-the-ground project
3 points if >70% of the funds are expended for on-the-ground project
4 points if >80% of the funds are expended for on-the-ground project
5 points if >90% of the funds are expended for on-the-ground project

Total Score Possible=68 points
Total Score____

Dated: August 5, 2005

Mitch King,

Assistant Director—Wildlife and Sport Fish Restoration Programs.

[FR Doc. 05–18415 Filed 9–15–05; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–922–05–1310–FI–P; NDM 85983, NDM 85987, NDM 85992, NDM 85998, and NDM 92293]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Per 30 U.S.C. 188(d), the lessees, Headington Oil, Limited Partnership, Upton Resources U.S.A., Inc., Northern Energy Corporation, and W.H. Champion, timely filed petitions for reinstatement of oil and gas leases NDM 85983, NDM 85987, NDM 85992, NDM 85998, and NDM 92293, Billings County, North Dakota. The lessees paid the required rentals accruing from the date of termination, February 1, 2005.

No leases were issued that affect these lands. The lessees agree to new lease terms for rentals and royalties of $10 per acre and 16⅔ percent or 4 percentages above the existing competitive royalty rate for each lease. The lessees paid the $500 administration fee for the reinstatement of each lease and $155 cost for publishing this Notice.

The lessees met the requirements for reinstatement of the leases per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate the leases, effective the date of termination, February 1, 2005, subject to:

- The original terms and conditions of each lease;
- The increased rental of $10 per acre for each lease;
- The increased royalty of 16⅔ percent or 4 percentages above the existing competitive royalty rate for each lease; and
- The $155 cost of publishing this Notice.

FOR FURTHER INFORMATION CONTACT: Karen L. Johnson, Chief, Fluids Adjudication Section, BLM Montana State Office, PO Box 36800, Billings, Montana 59107, 406–896–5098.

Karen L. Johnson,

Chief, Fluids Adjudication Section.

[FR Doc. 05–18456 Filed 9–15–05; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW159200]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease WYW159200 from EOG Resources Inc. for lands in Fremont County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW159200 effective June 1, 2004, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 05–18441 Filed 9–15–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW157569]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease WYW157569 from Rocky Mountain Land & Leasing, Inc. for lands in Hot Springs County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW157569 effective April 1, 2004, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 05–18452 Filed 9–15–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW157570]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease WYW157570 from Rocky Mountain Land & Leasing, Inc. for lands in Hot Springs County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW157570 effective April 1, 2004, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 05–18453 Filed 9–15–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW146283]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease WYW146283 from Gulf Exploration LLC for lands in Converse County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW146283 effective October 1, 2004, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 05–18454 Filed 9–15–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW146282]

Notice of proposed reinstatement of terminated oil and gas lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease WYW146282 from Gulf Exploration LLC for lands in Converse County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW146282 effective October 1, 2004, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 05–18455 Filed 9–15–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW149420]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease WYW149420 from Beard Oil Company for lands in Sweetwater County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessees have agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessees has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW149420 effective December 1, 2004, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 05–18457 Filed 9–15–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW131795]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease WYW131795 from Encana Energy Resources, Inc. for lands in Sweetwater County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW131795 effective April 1, 2004, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 05–18458 Filed 9–15–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW144552]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease WYW144552 from Chris S. Glade for lands in Natrona County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee

has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW144552 effective April 1, 2004, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 05–18459 Filed 9–15–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW 144663]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease WYW144663 from Crown Oil & Gas Co., Inc. for lands in Sublette County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW144663 effective April 1, 2004, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 05–18460 Filed 9–15–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW146280]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease WYW146280 from Gulf Exploration LLC for lands in Converse County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW146280 effective October 1, 2004, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 05–18461 Filed 9–15–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Availability of Ukiah Draft Resource Management Plan and Draft Environmental Impact Statement

AGENCY: Bureau of Land Management (BLM).

ACTION: Notice of availability of the Ukiah Draft Resource Management Plan and Draft Environmental Impact Statement.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan and Draft Environmental Impact Statement (RMP/EIS) for the Ukiah Field Office.

DATES: Written comments on the Draft RMP/EIS will be accepted for 90 days following the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. Future meetings or hearings and any other public involvement activities will be announced at least 15 days in advance through public notices, media news releases, and/or mailings.

ADDRESSES: You may submit comments at the public meetings or by any of the following methods:

- Web Site: *http://www.ca.blm.gov/ukiah* (subject to change)
- Fax: (707) 468–4027
- Mail: 2550 North State Street, Ukiah, California 95482

FOR FURTHER INFORMATION CONTACT: Eli Ilano, (916) 978–4427.

SUPPLEMENTARY INFORMATION: The planning area covers approximately 270,000 surface acres and approximately 214,000 acres of additional subsurface mineral estate within the following California counties: Marin, Solano, Sonoma, Mendocino, Lake, Napa, Yolo, Colusa, and Glenn. The Ukiah RMP, when completed, will provide management guidance for use and protection of the resources managed by the Ukiah Field Office. The Ukiah Draft RMP/EIS has been developed through a collaborative planning process and considers five alternatives. The primary issues addressed include: conflicts among motorized, mechanized, and non-motorized/non-mechanized recreationists; protection of sensitive natural and cultural resources from impacts due to increased recreational use and other land uses; provision of guidance for wind energy development; and addressing other planning issues raised during the scoping process. The

Draft RMP/EIS also includes consideration of the designation of Areas of Critical Environmental Concern (ACECs). The preferred alternative includes the following ACECs: Cache Creek ACEC—10,000 acres (existing); Northern California Chaparral RNA—11,206 acres (existing); Indian Valley Brodiaea ACEC—100 acres (currently 40 acres); Cedar Roughs ACEC/RNA—6,350 acres (currently 5,567 acres); Knoxville ACEC—5,236 acres; Stornetta ACEC—887 acres; Walker Ridge ACEC—3,990 acres; The Cedars ACEC—1,500 acres; Black Forest ACEC—239 acres; and Lost Valley ACEC—40 acres. Two additional ACECs, Blue Ridge ACEC—13,640 acres and Quail Ridge ACEC—558 acres, were considered but not included in the preferred alternative. Use of public lands within these ACECs would vary, depending on the resources and/or values identified (see Chapter 2 of the Draft RMP/EIS), but would likely include limitations on off-highway vehicle use and development projects.

Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety. CD and paper copies of the Ukiah Draft RMP/EIS are available at the Ukiah Field Office at the above address; CD copies are available at the California BLM State Office, 2800 Cottage Way, Sacramento, California 95825.

Dated: July 11, 2005.

Richard Burns,

Ukiah Field Office Manager.

[FR Doc. 05–18345 Filed 9–15–05; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0059

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed authority to collect information for: OSM grant forms—OSM–47 (Budget Information Report), OSM–49 (Budget Information and Financial Reporting) and OSM–51 (Performance and Program narrative); 30 CFR 735 (Grants for Program Development and Administration and Enforcement); and 30 CFR part 886 (State and Tribal Reclamation Grants).

DATES: Comments on the proposed information collection must be received by November 15, 2005, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtreleas@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8(d)]. This notice identifies information collections that OSM will be submitting to OMB for approval. These collections are contained in OSM grant forms—OSM–47 (Budget Information Report), OSM–49 (Budget Information and Financial Reporting) and OSM–51 (Performance and Program narrative); 30 CFR 735 (Grants for Program Development and Administration and Enforcement); and 30 CFR part 886 (State and Tribal Reclamation Grants). OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

Title: Budget information, financial reporting, and performance reporting forms.

OMB Control Number: 1029–0059.

Summary: State and tribal reclamation and regulatory authorities are requested to provide specific budget and program information as part of the grant application and reporting processes authorized by the Surface Mining Control and Reclamation Act.

Bureau Form Numbers: OSM–47, OSM–49 and OSM–51.

Frequency of Collection: Semi-annually and annually.

Description of Respondents: State and tribal regulatory and reclamation authorities.

Total Annual Responses: 132.

Total Annual Burden Hours: 680 hours.

Dated: September 13, 2005.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 05–18445 Filed 9–15–05; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act Native American Employment and Training Council

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended, and section 166(h)(4) of the Workforce Investment Act (WIA) [29 U.S.C. 2911(h)(4)], notice is hereby given of the next meeting of the Native American Employment and Training Council as constituted under WIA.

Time and Date: The meeting will begin at 9 a.m. Eastern Daylight Time (EDT) on Wednesday, October 12, 2005, and continue until 5 p.m. EDT that day. The period from 3 p.m. to 5 p.m. EDT on October 12 will be reserved for participation and presentation by members of the public. The meeting will reconvene at 9 a.m. EDT on Thursday, October 13, 2005, and adjourn at approximately 12 noon EDT on that day.

Place: All sessions will be held at the Grand Hyatt Washington, 1000 H Street, NW., Washington, DC.

Status: The meeting will be open to the public. Persons who need special accommodations should contact Ms. Athena Brown, Chief, Division of Indian

and Native American Programs, on (202) 693–3737 by September 30, 2005.

Matters To Be Considered: The formal agenda will focus on the following topics: (1) Strategic Planning for Economic Development, (2) Workgroup Reports, (3) Unemployment Insurance Wage Study-Findings and Recommendations, and (4) Training and Technical Assistance.

FOR FURTHER INFORMATION CONTACT: Ms. Athena Brown, Chief, Division of Indian and Native American Programs, Office of National Programs, Employment and Training Administration, U.S. Department of Labor, Room C–4311, 200 Constitution Avenue, NW., Washington, DC 20210.

Telephone: (202) 693–3737 (VOICE) (this is not a toll-free number), or (202) 693–3841.

Signed at Washington, DC this 9th day of September, 2005.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 05–18412 Filed 9–15–05; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from the date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The number of decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' are listed by Volume and State:

Volume V

Texas
- TX20030032 (Jun. 13, 2003)
- TX20030127 (Jun. 13, 2003)
- TX20030128 (Jun. 13, 2003)

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decision being modified.

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of a the 1,400 Government Depository Libraries across the country.

General wage determination issued under the Davis-Bacon and related act are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov)* of the national Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help Desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 8th day of September 2005.

Shirley Ebbesen,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 05–18216 Filed 9–15–05; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 05–136]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: September 16, 2005.

FOR FURTHER INFORMATION CONTACT: Jerry L. Seemann, Patent Counsel, Marshall Space Flight Center, Mail Code LS01, Huntsville, AL 35812; telephone (256) 544–6580; fax (256) 544–0258.

NASA Case No. MFS–31891–1: Video Sensor with Range Measurement Capability;

NASA Case No. MFS–31805–1: Rotational-Translational Fourier Imaging System Requiring Only One Grid Pair;

NASA Case No. MFS–31825–1: Systems, Method and Apparatus to Decontaminate an Ultra-High Vacuum System;

NASA Case No. MFS–31989–1: Systems, Methods and Apparatus for Vehicle Simulation;

NASA Case No. MFS–32175–1: Systems, Methods and Apparatus for Determining Physical Properties of Fluids;

NASA Case No. MFS–32214–1: Dual Expander Cycle Rocket Engine with an Intermediate, Closed-Cycle Heat Exchanger;

NASA Case No. MFS–32102–1: Boiler and Pressure Balls Monopropellant Thermal Rocket Engine.

Dated: September 12, 2005.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. 05–18446 Filed 9–15–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 05–137]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 16, 2005.

FOR FURTHER INFORMATION CONTACT: Robert M. Padilla, Patent Counsel, Ames Research Center, Code 202A–4, Moffett Field, CA 94035–1000; telephone (650) 604–5104; fax (650) 604–2767.

NASA Case No. ARC–15461–1: Portable Virtual Environment System for Emergency Response Applications;

NASA Case No. ARC–15487–1: Communication Path for Extreme Environments;

NASA Case No. ARC–15542–1: Catalyst Selection for Synthesis of Inorganic Nanostructures and Nanowires;

NASA Case No. ARC–15564–1: Clench Mode Control of Vehicle Motion or Appliance Operation;

NASA Case No. ARC–15461–2: Portable Environment Interrogation System for Health Care Workers in an Emergency Environment;

NASA Case No. ARC–15519–1: Applications of Sub-Audible Speech Recognition Based Upon Electromyographic Signals.

Dated: September 12, 2005.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. 05–18447 Filed 9–15–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 05–138]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 16, 2005.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Counsel, Glenn Research Center at Lewis Field, Code 500–118, Cleveland, OH 44135; telephone (216) 433–8855; fax (216) 433–6790.

NASA Case No. LEW–17166–1: Resilient, Flexible, Pressure-Activated Seal.

Dated: September 12, 2005.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. 05–18448 Filed 9–15–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–139)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: September 16, 2005.

FOR FURTHER INFORMATION CONTACT: David Walker, Patent Counsel, Goddard Space Flight Center, Mail Code 140.1, Greenbelt, MD 20771–0001; telephone (301) 286–7351; fax (301) 286–9502.

NASA Case No. GSC–14561–1: Screw Locking Wrench;

NASA Case No. GSC–14657–1: Evolvable Synthetic Neural System;

NASA Case No. GSC–14762–1: Reconfigurable Structure;

NASA Case No. GSC–14603–1: Anti-Backlash Gear-Bearings;

NASA Case No. GSC–15002–1: Method And Associated Apparatus For Capturing, Servicing, And De-Orbiting Earth Satellites Using Robotics;

NASA Case No. GSC–14525–2: Passive Gas-Gap Heat Switch For Adiabatic Demagnetization Refrigerator;

NASA Case No. GSC–14648–1: Charge Dissipative Electrical Interconnect.

Dated: September 12, 2005.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. 05–18449 Filed 9–15–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 05–140]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, is the subject of a patent application that has been filed in the United States Patent and Trademark office, and is available for licensing.

DATES: September 16, 2005.

FOR FURTHER INFORMATION CONTACT: Mark Homer, Patent Counsel, NASA Management Office—JPL, 4800 Oak Grove Drive, Mail Stop 180–200, Pasadena, CA 91109; telephone (818) 354–7770.

NASA Case No. NPO–40267–1: Reconfigurable Tomographic Imaging Spectrometer;

NASA Case No. NPO–40070–1: High Rated Alumina Nanotemplate Fabrication.

Dated: September 12, 2005.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. 05–18450 Filed 9–15–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 05–141]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, has been filed in the United States Patent and Trademark Office, and is available for licensing.

DATES: September 16, 2005.

FOR FURTHER INFORMATION CONTACT: Edward K. Fein, Patent Counsel, Johnson Space Center, Mail Code HA, Houston, TX 77058–8452; telephone (281) 483–4871; fax (281) 244–8452.

NASA Case No. MSC–23906–1: System and Method of Designing a Load Bearing Layer of an Inflatable Vessel.

Dated: September 12, 2005.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. 05–18451 Filed 9–15–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 05–142]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: September 16, 2005.

FOR FURTHER INFORMATION CONTACT: Linda B. Blackburn, Patent Counsel, Langley Research Center, Mail Code 141, Hampton, VA 23681–2199; telephone (757) 864–9260; fax (757) 864–9190.

NASA Case No. LAR–16877–1: Double Vacuum Bag Process for Resin Matrix Composite Manufacturing;

NASA Case No. LAR–17157–1: Liquid Crystalline Thermosets From Ester, Ester-Imide, and Ester-Amide Oligomers;

NASA Case No. LAR–16615–2: Polyimide Foams;

NASA Case No. LAR–16907–1: Deconvolution Methods and Systems for the Mapping of Acoustic Sources From Phased Microphone Arrays;

NASA Case No. LAR–16437–1–NP: Templated Growth of Carbon Nanotubes;

NASA Case No. LAR–16256–1: Method and Apparatus for Performance Optimization Through Physical Perturbation of Task Elements;

NASA Case No. LAR–16535–1: Composite Panel Having Subsonic Transverse Wave Speed Characteristics;

NASA Case No. LAR–15816–3: Piezoelectric Composite Apparatus and a Method for Fabricating the Same;

NASA Case No. LAR–16900–1: Carbon Nanotube-Based Sensor and Method for Detection of Crack Growth in a Structure;

NASA Case No. LAR–16946–1: Noise Reduction of Aircraft Flap.

Dated: September 12, 2005.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. 05–18462 Filed 9–15–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before October 31, 2005. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means (Note the new address for requesting schedules using e-mail):

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: requestschedule@nara.gov.

Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Acting Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 837–3120. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit

level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending (note the new address for requesting schedules using e-mail):

1. Department of Agriculture, Food Safety and Inspection Service (N1–462–05–4, 8 items, 5 temporary items). Inputs, outputs, system documentation, and electronic mail and word processing copies associated with an electronic information system that tracks violations of food safety and inspection regulations at domestic meat and poultry plants. Proposed for permanent retention are recordkeeping copies of master files, quality enforcement reports generated by the system, and documentation necessary to access and use the system.

2. Department of the Army, Agency-wide (N1–AU–04–10, 2 items, 2 temporary items). Records relating to the design and creation of identification cards, tags, badges, and other personnel identification instruments. Also included are electronic copies of these records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

3. Department of Defense, Office of the Inspector General (N1–509–04–1, 2 items, 2 temporary items). Master files and outputs associated with an electronic information system used to track audits and evaluations, findings, recommendations and audit follow-up, training, and time and attendance.

4. Department of Education, Office of Management, (N1–441–05–5, 2 items, 1 temporary item). Electronic copies of records created using electronic mail and word processing that pertain to case files relating to Department policies and procedures. Proposed for permanent retention are recordkeeping copies of these files.

5. Department of Health and Human Services, Centers for Disease Control and Prevention (N1–442–05–1, 4 items, 4 temporary items). Electronic copies of records created using electronic mail and word processing that are associated with employee medical conditions and exposure to harmful agents. This schedule also reduces the retention period for recordkeeping copies of files with potential research value, which were previously approved for disposal.

6. Department of Homeland Security, U.S. Immigration and Customs Enforcement (N1–567–05–2, 5 items, 5 temporary items). Inputs, outputs, master files, and documentation associated with an electronic information system used to collect and analyze aviation surveillance information.

7. Department of Housing and Urban Development, Office of Housing (N1–207–05–1, 11 items, 11 temporary items). Electronic copies of records created using electronic mail and word processing that are associated with the Interstate Land Sales Registration Program. This schedule also authorizes a change in the recordkeeping format of main filing, enforcement, and investigatory case files to electronic document format. Recordkeeping copies of these records in hardcopy and microfilm were previously approved for disposal.

8. Department of Housing and Urban Development, Office of Housing (N1–207–05–2, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that are associated with mortgagee approvals.

9. Department of Housing and Urban Development, Office of Housing (N1–207–05–3, 11 items, 11 temporary items). Electronic copies of records created using electronic mail and word processing that are associated with direct loans and capital advances for the elderly and persons with disabilities. This schedule also updates descriptions of recordkeeping copies of general subject files, chronological files, correspondence, and project and asset management files, which were previously approved for disposal.

10. Department of Housing and Urban Development, Office of Labor Relations (N1–207–05–4, 3 items, 3 temporary items). Annual review files pertaining to the monitoring of labor standards statutes and other related Office functions. Also included are electronic copies of records created using electronic mail and word processing.

11. Department of Justice, Criminal Division (N1–60–05–8, 1 item, 1 temporary item). This schedule reduces the retention period for recordkeeping copies of Dallas, Texas Bank Fraud Task Force case files, which were previously approved for disposal.

12. Department of Justice, Criminal Division (N1–60–05–9, 1 item, 1 temporary item). This schedule reduces the retention period for recordkeeping copies of New England Bank Fraud Task Force case files, which were previously approved for disposal.

13. The Department of Justice, Bureau of Prisons, (N1–129–05–15, 5 items, 5 temporary items). Inputs, outputs, master files, documentation, and electronic mail and word processing copies associated with an electronic information system used to manage food service at Federal prisons.

14. Department of Justice, Federal Bureau of Investigation (N1–65–05–8, 1 item, 1 temporary item). Records routinely compiled by program offices in advance of inspection by the Bureau's Office of Inspections. Records include a status report of current program activities, statistical accomplishments, and completed self-evaluations.

15. Department of Transportation, Federal Aviation Administration (N1–237–05–5, 4 items, 4 temporary items). Inputs, outputs, and master files associated with an electronic information system used to collect and disseminate airman medical certification files.

16. Department of Transportation, National Highway Traffic Safety Administration (N1–416–05–1, 4 items, 4 temporary items). Case files relating to disability discrimination complaints and discrimination in the workplace. Also included are electronic copies of records created using electronic mail and word processing.

17. Department of the Treasury, Financial Management Service (N1–425–05–3, 11 items, 7 temporary items). Records of the Electronic Funds Transfer Strategy Division relating to Government-wide cash management initiatives and objectives, including electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of marketing publications, posters, and public service announcements.

18. Department of the Treasury, Internal Revenue Service (N1–58–05–8, 1 item, 1 temporary item). Electronic forms to update and change government credit card holder information.

19. National Archives and Records Administration, Government-wide (N1-GRS–04–6, 8 items, 7 temporary items). Records relating to the management, maintenance, and operation of aircraft used by Federal agencies. Included are such records as flight orders and flight logs, correspondence pertaining to modifications and testing of equipment, aircraft engine and diagnostic reports, and other records useful in the investigation of aircraft accidents or incidents. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of aircraft maintenance manuals for unique or customized aircraft.

20. Small Business Administration, Investment Division (N1–309–05–14, 5

items, 5 temporary items). Master files, outputs, backups, documentation, and electronic mail and word processing copies associated with an electronic information system used to track Office of Operations correspondence in the Division.

21. Small Business Administration, Investment Division (N1–309–05–17, 5 items, 5 temporary items). Master files, outputs, backups, documentation, and electronic mail and word processing copies associated with an electronic information system used to track files relating to venture capital investments by small business investment companies.

22. Tennessee Valley Authority, Chief Financial Officer and Financial Services (N1–142–04–8, 4 items, 4 temporary items). Master files, outputs, and documentation associated with an electronic information system used to establish and manage risks related to power generation.

Dated: September 9, 2005.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 05–18382 Filed 9–15–05; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee No. 13883; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following Astronomy and Astrophysics Advisory (Committee No. 13883) meeting:

Date amd Time: October 11–12, 2005, 8:30 a.m.–5 p.m.

Place: National Science Foundation, Room 1235, Stafford I Building, 4201 Wilson Blvd., Arlington, Va 22230.

Type of Meeting: Open.

Contact Person: Dr. G. Wayne Van Citters, Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone (703) 292–4908.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

Agenda: To hear presentations of current programming by representatives from NSF, NASA, DOE and other agencies relevant to astronomy and astrophysics; to discuss current and potential areas of cooperation between the agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Dated: September 13, 2005.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 05–18465 Filed 9–15–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Environmental Research and Education (9487).

Dates: October 19, 2005, 8:30 a.m.–5 p.m. and October 20, 2005, 8:30 a.m.–3:30 p.m.

Place: Stafford I, Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. David Campbell, Directorate for Education and Human Resources, National Science Foundation, Suite 885, 4201 Wilson Blvd., Arlington, Virginia 22230. Phone (703) 292–5093.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda: October 19—Update on recent NSF environmental activities; Report on NSF–DOE Water workshop; Report on BE PI meeting; Discussion of AC–ERE topics of interest: AC–ERE task group meetings.

October 20—AC–ERE task group reports; Meeting with the Director; Presentation on ''environmental curricula at universities.''

Dated: September 13, 2005.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 05–18463 Filed 9–15–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geosciences (1755).

Dates/Times: October 5 & 6, 2005, 9–5:30 p.m., October 7, 2005, 8:30 a.m.–12 noon.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 375, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Thomas Spence, Directorate for Geosciences, National Science Foundation, Suite 705, 4201 Wilson Boulevard, Arlington, Virginia 22230, Phone (703) 292–8500.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research, education, and human resources development in the geosciences.

Agenda:

Day 1: Directorate Activities; Subcommittee Meetings.

Day 2: Subcommittee Reports; Directorate Activities.

Day 3: Plans and Activities.

Dated: September 13, 2005.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 05–18464 Filed 9–15–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No.: 50–483]

Callaway Plant, Unit 1; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–30 issued to the Union Electric Company (the licensee) for operation of the Callaway Plant, Unit 1, in Callaway County, Missouri.

The proposed amendment, submitted in the licensee's application dated September 9, 2005, would revise Surveillance Requirements (SRs) 3.7.3.1 and 3.7.3.2 and add SR 3.7.3.3 in Technical Specification (TS) 3.7.3, ''Main Feedwater Isolation Valves (MFIVs).'' The new SR 3.7.3.3 would add Figure 3.7.3–1, the acceptable valve closure time versus the steam generator pressure for the MFIVs, to the TSs.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance

with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. Revision of the MFIV stroke time limit has no impact on the frequency of occurrence of those events for which feedwater isolation is credited or assumed. The MFIVs themselves are not part of the initiating mechanisms or failure modes for such events (such as steamline break or feedwater line break). Therefore, the proposed change has no impact on the probability of occurrence of such events and does not involve a significant increase in the probability of an accident previously evaluated.

With regard to consequences of previously evaluated accidents, evaluations were documented in References 7.1, 7.2, and 7.3 [(the licensee's letters to the Nuclear Regulatory Commission dated June 27 and December 12, 2003, and September 17, 2004, respectively)] that assessed the impact of the change in MFIV actuators and an associated 15-second MFIV stroke time (for operating conditions that include secondary system pressures above the reference pressure that corresponds to [the] P–11 permissive) on LOCA [loss-of-coolant accident] mass and energy releases; main steamline break mass and energy releases; LOCA and LOCA related transients; non-LOCA transients; LOCA hydraulic forces and steam releases used for radiological consequence calculations. The consequences of those evaluations are not adversely affected by the proposed change to an increasing MFIV stroke time limit where appropriate for lower secondary system pressures. The evaluations discussed in Section 4.0 [of Attachment 2 to the licensee's application dated September 9, 2005,] demonstrate that such an increase in the MFIV stroke time from the 15 seconds assumed in the analyses performed in support of the Callaway RSG [Replacement Steam Generator] Program (Reference 7.3) to a higher bounding stroke time value of 90 seconds where appropriate for lower secondary system pressures is acceptable with respect to the impacted accident analyses. The resulting interpolated TS curve proposed as TS Figure 3.7.3–1 provides an MFIV stroke time limit that is pressure dependent but bounding, as it ensures the applicable FSAR [Callaway Final Safety Analysis Report] Chapter 15 events that credit MFIV closure remain bounding.

Therefore, the proposed change does not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed changes do not involve any hardware or design changes [n]or any changes in the methods by which safety-related plant systems perform their safety function. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this request. There will be no adverse effect or challenges imposed on any safety-related system as a result of the proposed change.

Therefore, the proposed change does not create a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. The proposed changes to incorporate a pressure-dependent MFIV surveillance stroke time limit and to delete the Notes on SR 3.7.3.1 and SR 3.7.3.2 do not affect any safety analysis acceptance criteria nor involve any change to a safety analysis limit, limiting safety system setting, or safety system performance criterion. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. The radiological dose consequence acceptance criteria will continue to be met. There will be no significant impact on the overpower limit, departure from nucleate boiling ratio limits, heat flux hot channel factor (FQ), nuclear enthalpy rise hot channel factor (F-delta-H), loss[-]of[-]coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for

leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestors/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(I)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated September 9, 2005, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 12th day of September, 2005.

For the Nuclear Regulatory Commission.

Jack Donohew,

Senior Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–5086 Filed 9–15–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Number 030–04781]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Pharmacia & Upjohn Company, Kalamazoo, Michigan

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Dr. Peter J. Lee, Decommissioning Branch, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region III, 2443 Warrenville Road, Lisle, Illinois 60532–4352. Telephone: (630) 829–9870; fax number: (630) 515–1259; e-mail: *pjl2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuing a license amendment of Material License No. 21–00182–03 issued to Pharmacia & Upjohn Company (the licensee), to authorize release of its 200 Portage Road facility for unrestricted use.

The NRC staff has prepared an Environmental Assessment (EA) in

support of this amendment in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed action is to amend the licensee's byproduct material license and release its 200 Portage Road facility for unrestricted use. On April 24, 1958, the Atomic Energy Commission authorized the licensee to conduct the radiological operations. The primary radioactive materials used at 200 Portage Road facility were hydrogen-3, carbon-14, phosphorus-32, phosphorus-33, sulfur-35, and iodine-125. On June 20, 2005, the licensee submitted a license amendment request to amend its license to release its 200 Portage Road facility for unrestricted use. The licensee has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the license termination criteria in 10 CFR 20.1402, ''Radiological Criteria for Unrestricted Use.''

The staff has examined the licensee's request and the information provided in support of its request, including the surveys performed to demonstrate compliance with the release criteria. The staff has found that the environmental impacts from the proposed action are bounded by the impacts evaluated in the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (NUREG–1496). Based on its review, the staff has determined that there are no additional remediation activities necessary to complete the proposed action and a Finding of No Significant Impact is appropriate.

III. Finding of No Significant Impact

On the basis of the EA, the NRC concluded that there are no significant environmental impacts from the proposed amendment and determined not to prepare an environmental impact statement.

IV. Further Information

In accordance with 10 CFR 2.390 of the NRC's ''Rules of Practice,'' documents related to this action, including the application for amendment and supporting documentation, will be available electronically for public inspection and copying from the Publicly Available Records (PARS) of NRC's document system (ADAMS) accessible from the NRC's Web site at *http://www.nrc.gov/reading-rm/adams.html.* The ADAMS accession numbers for the documents related to this notice are: ML051740182 for the June 20, 2005, amendment request, and ML052520086 for the EA summarized above. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Lisle, Illinois, this 9th day of September, 2005.

For the Nuclear Regulatory Commission.

Jamnes L. Cameron,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, Region III.

[FR Doc. E5–5085 Filed 9–15–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–07455]

Notice of Availability of Environmental Assessment and Fining of No Significant Impact for License Amendment for Whittaker Corporation's Facility in Greenville, PA

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Marjorie McLaughlin, Decommissioning Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, telephone (610) 337–5240, fax (610) 337–5269; or by e-mail: *mmm3@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license renewal and amendment to Whittaker Corporation for Materials License No. SMA–1018. The proposed action would allow for the continued decontamination and decommissioning of the Whittaker waste storage facility in the Reynolds Industrial Park near Greenville, Pennsylvania. The proposed action also includes NRC approval of site-specific dose concentration guideline levels (DCGLs) for use in developing the Decommissioning Plan for the site. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the action is to renew and amend the NRC license for decontamination and decommissioning (D&D) of the Whittaker waste storage facility in Greenville, Pennsylvania. This action allows for the continued characterization and other decommissioning activities at this site, and approves site-specific DCGLs which will define the cleanup criteria for radioactive contaminants. Whittaker Corporation was authorized by NRC from December 15, 1969, to use radioactive materials for minerals processing purposes at the site. Some of the raw materials used in these processes contained licensable quantities of natural thorium or uranium which were concentrated in the waste byproduct. Processing operations utilizing licensable materials ceased in 1975, and decommissioning activities began. A portion of the site was released for unconditional use in 1985. Whittaker Corporation has been maintaining control over the radioactive materials at the remaining site, while developing a plan for remediation. On May 28, 2004, Whittaker Corporation requested renewal of NRC License No. SMA–1018 to allow for the continued D&D of the site. On August 10, 2004, Whittaker Corporation submitted a Dose Assessment of the site to support the use of proposed DCGLs for site contaminants. The dose assessment shows that the site will meet the dose-based License Termination Rule criteria in 10 CFR 20 Subpart E if the contaminants are remediated to the proposed DCGLs. The DCGLs will be incorporated into the Decommissioning Plan being developed by Whittaker Corporation to describe final site remediation activities. The Decommissioning Plan will also be submitted for approval by the NRC, and will be noticed in the **Federal Register** separately.

The NRC staff has prepared an EA in support of the license amendment. The NRC staff has reviewed the dose assessment and the procedures and controls submitted by Whittaker Corporation. Based on its review, the staff has determined that the affected environment associated with D&D at the

Whittaker Corporation's facility will have no significant environmental impact, and that a Finding of No Significant Impact is appropriate.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the license renewal and amendment to authorize continued D&D of the Whittaker waste storage facility in Greenville, Pennsylvania. On the basis of the EA, the NRC has concluded that there are no significant environmental impacts from the proposed action, and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

Documents related to this action, including the application for the license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: The Environmental Assessment [ML052440421], Telephone Log Dated 2/17/05 Re. Questions in Support of License Renewal [ML050490050], Deficiency Response Letter [ML050680314], Revision I of Scientech Document No. 82A9534, ''Dose Assessment in Support of Establishing Derived Concentration Guideline Levels for the Whittaker Decommissioning Site'', dated August 10, 2004 [ML042310154]. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Documents related to operations conducted under this license not specifically referenced in this Notice may not be electronically available and/or may not be publicly available. Persons who have an interest in reviewing these documents should submit a request to the NRC under the Freedom of Information Act (FOIA). Instructions for submitting a FOIA request can be found on the NRC's Web site at *http://www.nrc.gov/reading-rm/foia-privacy.html*.

Dated at King of Prussia, Pennsylvania this 9th day of September, 2005.

For the Nuclear Regulatory Commission.

Marie Miller,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E5–5084 Filed 9–15–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Documents Regarding Spent Fuel Transportation Package Response to the Baltimore Tunnel Fire Scenario

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Allen Hansen, Thermal Engineer, Criticality, Shielding and Heat Transfer Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Telephone: (301) 415–1390; Fax number: (301) 415–8555; E-mail: *agh@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Under contract with the Nuclear Regulatory Commission (NRC), The Pacific Northwest National Laboratory prepared a draft NUREG/CR report, ''Spent Fuel Transportation Package Response to the Baltimore Tunnel Fire (BTF) Scenario.'' This NUREG/CR documents the thermal analyses of three different spent fuel transportation packages exposed to the BTF scenario: TransNuclear TN–68, Holtec HI-STAR 100 and the NAC LWT. Consequence analyses prepared by the Spent Fuel Project Office staff are also included.

The NRC is soliciting public comments on this draft NUREG/CR which will be considered in the final version or subsequent revisions.

II. Summary

The purpose of this notice is to provide the public an opportunity to review and comment on the Draft NUREG/CR thermal analyses, the consequence analyses and the conclusions.

III. Further Information

Documents related to this action are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are provided in the following table. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

NUREG/CR Files	ADAMS accession No.
Spent Fuel Transportation Package Response to the Baltimore Tunnel Fire Scenario	ML052500391
Appendix A—Material Properties for COBRA–SFS Model of TN–68 Package	ML052490246
Appendix B—Material Properties for ANSYS Model of HI–STAR 100 Package	ML052490258
Appendix C—Material Properties for ANSYS Model of Legal Weight Truck Package	ML052490264
Appendix D—Blackbody View Factors for COBRA–SFS Model of TN–68 Package	ML052490268
Appendix E—HOLTEC HI–STAR 100 Component Temperature Distributions	ML052490270

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Comments and questions on the draft NUREG/CR should be directed to the NRC contact listed below by October 31, 2005. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Contact: Allen Hansen, Thermal Engineer, Criticality, Shielding and Heat Transfer Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Telephone: (301) 415–1390; fax number: (301) 415–8555; e-mail: *agh@nrc.gov.*

Dated at Rockville, Maryland this 9th day of September, 2005.

For the Nuclear Regulatory Commission.

M. Wayne Hodges,

Deputy Technical Review Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–5083 Filed 9–15–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52401; File No. 4–429]

Joint Industry Plan; Notice of Filing of Joint Amendment No. 16 to the Intermarket Option Linkage Plan Relating to the Definition of Firm Customer Quote Size and Restrictions on Sending Certain Principal Acting as Agent Orders

September 9, 2005.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 11Aa3–2 thereunder,[2] notice is hereby given that on April 13, 2005, April 26, 2005, April 26, 2005, April 27, 2005, May 27, 2005 and June 2, 2005, the International Securities Exchange, Inc. (''ISE''), American Stock Exchange LLC (''Amex''), Chicago Board Options Exchange, Incorporated (''CBOE''), Pacific Exchange, Inc. (''PCX''), Boston Stock Exchange, Inc. (''BSE''), and Philadelphia Stock Exchange, Inc. (''Phlx'') (collectively, the ''Participants'') respectively submitted to the Securities and Exchange Commission (''Commission'') Joint Amendment No. 16 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the ''Linkage Plan'').[3] The Joint Amendment proposes to modify the definitions of Firm Customer Quote Size (''FCQS'') [4] and remove certain restrictions on sending secondary Principal Acting as Agent orders (''P/A Orders'') [5] through the Intermarket Option Linkage (''Linkage''). The Commission is publishing this notice to solicit comments from interested persons on the proposed Linkage Plan Joint Amendment.

I. Description and Purpose of the Amendment

The purpose of the Joint Amendment is to modernize the definition of FCQS. At the time the Linkage Plan was drafted, options quote sizes were not disseminated through the Options Price Reporting Authority (''OPRA'') and most Participants employed automatic execution systems that guaranteed automatic fills on orders less than a certain contract size (which was generally a static number). As such, the FCQS was calculated based on the number of contracts the sending or receiving Participant guaranteed it would automatically execute. Now that all options exchanges disseminate dynamic quotes with size, the Participants believe that it is appropriate to calculate the FCQS based on the size of the disseminated quotation of the Participant receiving the P/A Order.

The other purpose of the Joint Amendment is to eliminate a 15-second wait period for sending a secondary P/A Order pursuant to Section 7(a)(ii)(B)(1)(*b*) of the Linkage Plan. That section governs the manner in which a P/A Order larger than the FCQS can be broken into smaller P/A Orders. It provides that an initial P/A Order can be sent to the Participant disseminating the National Best Bid or Offer (''NBBO'') for the FCQS, and that if the NBBO market continues to disseminate the same price after 15 seconds from the execution of the initial P/A Order, a secondary P/A Order can be sent for at least the lesser of (i) the size of the disseminated quote; (ii) 100 contracts; or (iii) the remainder of the customer order underlying the P/A Orders. The Participants propose to eliminate the 15-second wait because the dynamic quotes with size now employed by the Participants obviate the need for a manual quote refresh period for P/A Orders.

II. Implementation of the Plan Amendment

The Participants intend to make the proposed Joint Amendment to the Linkage Plan reflected in this filing effective when the Commission approves the Joint Amendment.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Joint Amendment to the Linkage Plan is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number 4–429 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number 4–429. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of the Amex, BSE, CBOE, ISE, PCX, and Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–429 and should be submitted on or before October 7, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–18410 Filed 9–15–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by the Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, upon separate requests by the Phlx, PCX, and BSE, the Commission issued orders to permit these exchanges to participate in the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000), 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000) and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[4] Section 2(11) of the Linkage Plan.

[5] Section 2(16)(a) of the Linkage Plan.

[6] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52403; File No. SR–NASD–2003–104]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, 3, 4, 5 and 6 Thereto Relating to Proposed Uniform Definition of ''Branch Office'' Under NASD Rule 3010(g)(2)

September 9, 2005.

I. Introduction

On July 2, 2003, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the definition of ''branch office'' set forth in NASD Rule 3010(g)(2) and to adopt NASD IM–3010–1 to provide guidelines on factors to be considered by a member firm in conducting internal inspections of offices. On October 21, 2003, NASD amended the proposed rule change.[3] On December 8, 2003, NASD amended the proposed rule change.[4]

The proposed rule change, as amended by Amendments Nos. 1 and 2, was published for comment in the **Federal Register** on December 16, 2003.[5] The Commission received 847 comment letters on the proposal, as amended.[6] On June 29, 2004, NASD submitted a response to the comment letters.[7] On September 20, 2004, NASD amended the proposed rule change (''Amendment No. 3'').[8] On March 21, 2005, NASD amended the proposed rule change (''Amendment No. 4'').[9] On June 1, 2005, NASD amended the proposed rule change (''Amendment No. 5'').[10] On August 23, 2005, NASD amended the proposed rule change (''Amendment No. 6'').[11] This order approves the proposed rule change, as amended.

II. Description of Proposed Rule Change

NASD currently defines a branch office as any location identified by any means to the public or customers as a location at which the member conducts an investment banking or securities

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Kosha K. Dalal, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated October 21, 2003 (''Amendment No. 1'').

[4] *See* letter from Kosha K. Dalal, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated December 8, 2003 (''Amendment No. 2'').

[5] *See* Securities Exchange Act Release No. 48897 (December 9, 2003), 68 FR 70059.

[6] *See* letters from Stephen A. Batman, CEO, 1st Global Capital Corp., dated January 5, 2004 (''1st Global Letter''); Mario DiTrapani, President, Association of Registration Management, dated January 6, 2004 (''ARM Letter''); Carl B. Wilkerson, Chief Counsel, Securities & Litigation, American Council of Life Insurers, dated December 23, 2003 (''ACLI Letter''); Carl B. Wilkerson, Vice President & Chief Counsel, Securities & Litigation, American Council of Life Insurers, dated October 5, 2004 (''ACLI Letter 2''); Charles Barley, dated January 21, 2004 (''Barley Letter''); Mike Becher, dated January 21, 2004 (''Becher Letter''); Rod Bieber, dated January 21, 2004 (''Bieber Letter''); Sherri Branson, Agent, State Farm Insurance Companies, dated January 26, 2004 (''Branson Letter''); John R. Claborn, John R. Claborn & Associates, dated January 21, 2004 (''Claborn Letter''); Charles Ehlert, Rural Insurance Companies, received February 12, 2004 (''Ehlert Letter''); Lawrence J. Fowler, Jr., CLU, LUTCF, Nationwide, dated February 2, 2004 (''Fowler Letter''); Michael Garcia, dated January 20, 2004 (''Garcia Letter''); Bob Geis, CLU, Registered Representative, AXA Network, dated January 28, 2004 (''Geis Letter''); Arthur K. Gruber, CLU, Registered Representative, AXA Advisors, LLC, dated January 23, 2004 (''Gruber Letter''); Richard A. Gurdjian, dated January 20, 200 (''Gurdjian Letter''); Clark Hall, dated January 21, 2004 (''Hall Letter''); Joan M. Halstead, CLU, REBC, ChCF, Chartered Financial Consultant, Halstead Financial Associates, dated January 21, 2004 (''Halstead Letter''); Karen R. Hammond, ChFC, The Hammond Agency, Inc., dated January 21, 2004 (''Hammond Letter''); Jeffrey K. Hoelzel, MTL Equity Products, Inc., dated January 28, 2004 (''Hoelzel Letter''); Raymond Howen, Rural Insurance Companies, received February 11, 2004 (''Howen Letter''); Edwin P. Morrow, CLU, ChFC, CFP, RFC, President and CEO, International Association of Registered Financial Consultants, Inc., dated January 21, 2004 (''IARFC Letter''); Gene Imke, dated January 30, 2004 (''Imke Letter''); Thomas R. Moriarty, President, InterSecurities, Inc., dated January 6, 2004 (''InterSecurities Letter''); Jim Jacobsen, State Farm, received February 9, 2004 (''Jacobsen Letter''); Michael Lisle, Mutual of Omaha Insurance Company, dated January 21, 2004 (''Lisle Letter''); Carl Lundgren, received March 30, 2004 (''Lundgren Letter''); Peter J. Mersberger, Mersberger Financial Group, Inc., dated January 27, 2004 (''Mersberger Letter''); Leonard M. Bakal, Vice President and Compliance Director, Metropolitan Life Insurance Company, dated January 14, 2004 (''MetLife Letter''); Gary A. Sanders, National Association of Insurance and Financial Advisors, dated January 29, 2004 (''NAIFA Letter''); Ralph A. Lambiase, NASAA President and Director, Connecticut Division of Securities, North American Securities Administrators Association, Inc., dated January 6, 2004 (''NASAA Letter''); David Niederbaumer, CLU, ChFC, Financial Associate, and Matt Niederbaumer, Financial Associate, Thrivent Financial for Lutherans, dated January 30, 2004 (''Niederbaumer Letter''); Kathy Northrop, dated January 20, 2004 (''Northrop Letter''); Michael Leahy, President, NYLIFE Securities Inc., dated January 29, 2004 (''NYLIFE Letter''); Gerald J. O'Bee, CLU, ChFC, CLTC, CSA, Insurance and Financial Services, MassMutual Financial Group, dated January 26, 2004 (''O'Bee Letter''); Walter Olshanski, dated January 21, 2004 (''Olshanski Letter''); Minoo Spellerberg, Compliance Director, Princor Financial Services Corporation, dated February 6, 2004 (''Princor Letter''); Minnie Whitmire, Registrations Supervisor, Raymond James & Associates, Inc., dated January 12, 2004 (''Raymond James Letter''); George Nelson Ridings, ChFC CLU, dated January 27, 2004 (''Ridings Letter''); Walter Scott, dated January 21, 2004 (''Scott Letter''); John Polanin, Jr., Chairman, Self-Regulation and Supervisory Practices Committee, Securities Industry Association, dated January 9, 2004 (''SIA Letter''); Christopher Shaw, Vice President & Acting Chief Compliance Officer, Transamerica Financial Advisors, Inc., dated January 6, 2004 (''TFA Letter''); John Gilner, Vice President; Henry H. Hopkins, Vice President; and Sarah McCafferty, Vice President, T. Rowe Price Investment Services, Inc., dated January 5, 2004 (''T. Rowe Price Letter''); Paul B. Uhlenhop, Lawrence, Kamin, Saunders & Uhlenhop, L.L.C., dated December 31, 2003 (''Uhlenhop Letter''); Roy D. Vega, Vega Insurance & Financial Services, dated January 21, 2004 (''Vega Letter''); Al Villasenor, Unisure Insurance Services Inc. and Villasenor Insurance Associates, dated January 28, 2004 (''Villasenor Letter''); and Connie Walenta, dated January 21, 2004 (''Walenta Letter''). In addition, the Commission received 756 comment letters from individuals or entities using ''Letter Type A'' and 45 comment letters from individuals or entities using ''Letter Type B,'' both of which expressed concerns over the effect the proposed rule change would have on broker-dealers affiliated with life insurance companies. Letter Types A and B are posted on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*).

[7] *See* letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated June 29, 2004 (''NASD Response Letter'').

[8] *See* letter from Patrice Gliniecki, Senior Vice President and Deputy General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated September 20, 2004. In Amendment No. 3, NASD revised the language of NASD Rule 3010(g)(2) to reflect changes made by File No. SR–NASD–2002–162, approved in Securities Exchange Act Release No. 49883 (June 17, 2004), 69 FR 35092 (June 23, 2004). This was a technical amendment and is not subject to notice and comment.

[9] In Amendment No. 4, NASD: (i) amended the proposed definition of ''branch office'' set forth in NASD Rule 3010(g)(2)(A) to exclude a member's main office to conform to the definition proposed by the NYSE in File No. SR–NYSE–2002–34 (NASD rules do not define ''main office''). The NASD made this change to its rule so that the rule would be consistent with the NYSE rule and to avoid confusion for dual members; (ii) added new subparagraph (2)(C) to NASD Rule 3010(g) to clarify the rules and regulations applicable to a member's main office; and (iii) designated proposed new text to Rule 3010(g)(2) as being subparagraph (D). However, Amendment No. 6 deletes the exclusion of a member's main office from the definition and proposed subparagraph 2(C) to NASD Rule 3010(g) described in items (i) and (ii) above, respectively. *See* note 11, *infra*. NASD also responded to ACLI Letter II in Amendment No. 4 (''NASD Response Letter 2''). This was a technical amendment and is not subject to notice and comment.

[10] In Amendment No. 5, NASD made minor changes correcting the grammar, markings, and a cross-reference in the text of the proposed rule change. This was a technical amendment and is not subject to notice and comment.

[11] In Amendment No. 6, NASD deleted (i) the proposed exclusion from registration as a branch office for main offices of a member and (ii) proposed subparagraph 2(C) to Rule 3010(g), added in Amendment No. 4, in order to maintain a uniform proposed definition of branch office with the NYSE's proposal. NASD also clarified the effective date of the proposed rule change and made minor technical changes to the rule text. In addition, NASD responded to comments relating to remote traders in Amendment No. 6 (''NASD Response Letter 3''). This was a technical amendment and is not subject to notice and comment.

business. The current definition contains the following exclusions: (1) A location identified in a telephone directory, on a business card, or letterhead; (2) a location referred to in a member advertisement; (3) a location identified in a member's sales literature; and (4) any location where a person conducts business on behalf of the member only occasionally; provided, in each case, that the phone number and address of the branch office or Office of Supervisory Jurisdiction (''OSJ'') that supervises the location is also identified.[12] NASD currently designates locations from which associated persons work as either branch offices or unregistered locations. This designation primarily affects the supervisory responsibilities of, and the fees paid by, members.

There is currently no uniform approach among regulators for classifying locations from which registered representatives regularly conduct the business of effecting transactions in securities. The Commission, the New York Stock Exchange, Inc. (''NYSE''), NASD and state securities regulators all define the term ''branch office'' differently and, as a result, a member must comply with multiple definitions in each jurisdiction in which it conducts a securities business. This requires tracking numerous definitions, filing multiple forms to register and/or renew registration of such locations, meeting various deadlines, and continually monitoring each jurisdiction for changes in rules or procedures. Moreover, NASD member firms must register branch offices with the Commission, NASD, and particular state(s) by completing Schedule E to Form BD (''Schedule E''), which NASD staff and state regulators believe does not adequately fulfill their regulatory needs. In addition, according to NASD, members have found Schedule E to be a burdensome and time-consuming method by which to register branch offices.

As a result, NASD has been working with the North American Securities Administrators Association (''NASAA''), and the NYSE to reduce the inconsistencies that exist among the various ways in which locations are defined in order to increase the utility of the Central Registration Depository (''CRD®'') as a central branch office registration system for NASD, other self-regulatory organizations (''SROs''), and states. The parties reached a core proposed uniform definition, which largely tracks the Commission's definition of ''office'' in Rules 17a–3 and 17a–4 under the Act (the ''Books and Records Rules'').[13] NASD filed the instant proposed rule change and the NYSE filed a proposed rule change containing a substantially similar definition of branch office, but containing an additional limitation on the primary residence exception as discussed below.[14] In addition, NASD has proposed new Form BR in a separate filing, which would permit registration of branch offices through the CRD® system.[15]

The instant proposal would define a ''branch office'' as any location where one or more associated persons of a member regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or any location held out as such.[16] The proposed rule change would exclude from registration as a branch office: (1) A location that operates as a back office; (2) a representative's primary residence, provided it is not held out to the public and certain other conditions are satisfied; (3) a location, other than the primary residence, that is used for less than 30 business days annually for securities business, is not held out to the public as an office, and satisfies certain of the conditions set forth in the primary residence exception; (4) a location of convenience used occasionally and by appointment; (5) a location used primarily for non-securities business and from which less than 25 securities transactions are effected annually; (6) the floor of an exchange; and (7) a temporary location used as part of a business continuity plan.

In developing the proposed definition, NASD sought to provide reasonable exceptions from branch office registration to take into account technological innovations and current business practices without compromising the need for investor protection. NASD believes the proposed exceptions from branch office registration are practically based while still containing important safeguards and limitations to protect investors. Further, the primary residence exception contains significant safeguards, including that: (1) Only one associated person or associated persons who are members of the same immediate family and reside at the location may conduct business at such location; (2) the location cannot be held out to the public and the associated person may not meet with customers at the location; (3) neither customer funds nor securities may be handled at that location; (4) the associated person must be assigned to a designated branch office, and the branch office must be reflected on all business cards, stationery, advertisements, and other communications to the public; (5) the associated person's correspondence and communications with the public must be subject to the firm's supervision;[17] (6) electronic communications must be made through the firm's system; (7) all orders must be entered through the designated branch office or an electronic system established by the member and reviewable at such location; (8) written supervisory procedures pertaining to supervision of sales activities conducted at the residence must be maintained by the member; and (9) the member must maintain a list of the residence locations. These limitations closely track the limitations on the use of a private residence in the Books and Records Rules.[18]

As noted above, the NYSE's initial proposed definition contained an additional limitation on the primary residence exception, which would have limited to 50 the number of business days an associated person would be permitted to work from his primary

[12] An office that is designated a ''branch office'' under NASD rules must pay an annual registration fee and have a branch manager on site. A branch office is further classified as an OSJ if any one of the following enumerated activities occurs at the location: order execution, maintenance of customer funds and securities, final approval of new accounts and advertisements, review of customer orders, and supervision of associated persons at other branch offices. An office that is designated an OSJ must have a registered principal on-site and be inspected on an annual basis. NASD Rule 3010(c) provides that each branch office shall be inspected according to a cycle set forth in the firm's written supervisory and inspection procedures.

[13] 17 CFR 240.17a–3 and 17 CFR 240.17a–4.

[14] *See* Securities Exchange Act Release No. 46888 (November 22, 2002), 67 FR 72257 (December 4, 2002) (SR–NYSE–2002–34). The Commission is simultaneously approving the NYSE's proposed rule change. *See* Securities Exchange Act Release No. 52402 (September 9, 2005).

[15] *See* Securities Exchange Act Release No. 51742 (May 25, 2005), 70 FR 32386 (June 2, 2005) (SR–NASD–2005–030). *See also* Correction, 70 FR 48802 (August 19, 2005) (including language inadvertently omitted from the first sentence of footnote 3).

[16] Amendment No. 6 deleted the exclusion ''other than the main office'' from the definition of branch office as initially proposed. The NASD states that this change would supercede any earlier statements made concerning the registration requirements applicable to members' main offices under NASD rules. The NASD notes that IM–1000–4 addresses the need for members to keep their membership applications current, as well as to properly designate and register offices of supervisory jurisdiction and branch offices. NASD intends to propose future amendments to IM–1000–4, assuming the SEC's approval of this proposed rule change and the proposed new Form BR. *See* Amendment No. 6, *supra* note 11.

[17] The Commission notes that all correspondence and communications with the public by an associated person is subject to the firm's supervision.

[18] 17 CFR 240.17a–4(l).

residence without requiring registration as a branch office.[19] NASD concluded that the 50-business day limitation on the use of a primary residence would not be practical for small firms and independent dealers, and would not provide any added regulatory benefit, and therefore did not include this limitation in the instant proposal. The NYSE subsequently proposed to remove this limitation from its proposed rule change.[20]

NASD's proposed definition also would exempt from branch office registration a temporary location, other than a primary residence, that is used for securities business less than 30-business days in any calendar year. The limitations on the use of a primary residence described above also would apply to use of a temporary location for conducting securities business.[21] For purposes of calculating the number of days for this exception, the proposed rule provides that a ''business day'' would not include any partial business day, provided that the associated person spends at least four hours on such business day at his or her designated branch office during normal business hours.

The proposed definition would exempt ''offices of convenience'' from branch office registration, provided that associated persons meet customers only occasionally and exclusively by appointment, and that the location not be held out to the public as a branch office. When such office of convenience is located on bank premises, however, signage necessary to comply with applicable Federal and State laws, rules and regulations, and applicable rules and regulations of NASD, other self-regulatory organizations, and securities or banking regulators would be permitted in order to avoid confusing customers who might otherwise believe that traditional low-risk investments, such as deposits, are being offered by associated persons at such offices on bank premises. In addition, other than meeting customers at these offices of convenience, all other functions of the associated person would be conducted and supervised through the designated branch office.

The proposed rule also exempts from branch office registration any location that is primarily used to engage in non-securities activities (*e.g.*, insurance) and from which the associated person effects no more than 25 securities transactions in any one calendar year, provided that advertisements or sales literature identifying such location also set forth the location from which the associated person is directly supervised. In addition, such securities activities would be conducted through and supervised by the associated person's designated branch office.

However, notwithstanding the exclusions in NASD Rule 3010(g)(2)(A), any location that is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the member would be considered to be a branch office.[22]

The proposed rule change also sets forth proposed NASD IM–3010–1, which emphasizes the existing requirement that members establish reasonable supervisory procedures and conduct reviews of locations taking into consideration, among other things, the firm's size, organizational structure, scope of business activities, number and location of offices, the nature and complexity of products and services offered, the volume of business done, the number of associated persons assigned to a location, whether a location has a principal on-site, whether the office is a non-branch location, and the disciplinary history of the registered person. The proposed interpretive material notes that members would be required to be especially diligent in establishing procedures and conducting reasonable reviews with respect to non-branch locations.

NASD indicated in Amendment No. 6 that it expects to deploy branch office functionality in CRD® in the Fall of 2005 and that it expects to make the proposed rule change effective the first quarter of 2006.

III. Comment Summary

As noted above, the Commission received 847 comment letters with respect to the proposed rule change.[23] NASD filed a response letter to address concerns raised by the commenters,[24] and subsequently filed a second response letter to address comments made in ACLI Letter 2 [25] and a third response letter to address comments relating to remote traders.[26]

Several of the commenters applauded NASD for its efforts in creating a uniform definition of branch office,[27] agreeing that a uniform definition would have benefits for broker-dealers.[28] One commenter stated that ''regulatory coordination and cooperation produces effective and efficient regulation that serves the best interests of investors, regulators and member firms alike'' and supported NASD's proposed definition as ''a practical definition that takes into account technological innovations and current business practices without compromising the need for investor protection.'' [29] Several commenters expressed support for the facilitation and streamlining of branch office registration with CRD®,[30] stating that it would provide an ''efficient and centralized method for members and associated persons to register branch offices'' as required by SROs and states.[31]

Commenters responding to the Commission's specific request for comment on NASD's primary residence exception and the divergent proposals by NASD and the NYSE with respect to the NYSE's proposed annual 50-business day limitation on engaging in securities activities from a primary residence, expressed unanimous support for NASD's approach.[32] Commenters expressed the opinion that the rationale for branch office registration should be determined by the types of activities performed at that location, rather than the number of days spent there.[33]

A substantial majority of the commenters, including those who submitted Letter Types A and B, expressed general concerns about the effect the proposed rule change would have upon limited purpose broker-dealers affiliated with life insurance companies. Many of these commenters expressed the view that the proposed rule change would have a disproportionate impact on limited purpose broker-dealers, as compared to full-service broker-dealers who conduct their activities from offices that meet NASD's current definition of branch office.[34] These commenters pointed out

[19] *See* SR–NYSE–2002–34, *supra* note 14.

[20] *See* Amendment No. 2 to SR–NYSE–2002–34.

[21] For purposes of satisfying condition (a) to the temporary location exception, an associated person would be deemed to ''reside'' at such temporary location.

[22] *See* NASD Rule 3010(g)(2)(B). This rule text was added to reflect changes made by File No. SR–NASD–2002–162. This language conforms to similar language proposed by the NYSE in SR–NYSE–2002–34. *See supra* notes 8 and 14.

[23] *See supra* note 6.

[24] *See supra* note 7.

[25] *See supra* note 9.

[26] *See supra* note 11.

[27] *See* ARM Letter, InterSecurities Letter, Princor Letter, and TFA Letter, *supra* note 6.

[28] *See* Princor Letter, *supra* note 6. The Princor Letter went on to discuss changes it believed would be necessary to achieve this goal.

[29] *See* SIA Letter, *supra* note 6.

[30] *See* ARM Letter, NASAA Letter, and SIA Letter, *supra* note 6.

[31] *See* ARM Letter, *supra* note 6.

[32] *See* ARM Letter, InterSecurities Letter, MetLife Letter, Princor Letter, SIA Letter, T. Rowe Price Letter, and TFA Letter, *supra* note 6.

[33] *See* ARM Letter and SIA Letter, *supra* note 6.

[34] *See* ACLI Letter, ACLI Letter 2, Branson Letter, Ehlert Letter, Fowler Letter, Garcia Letter, Gurdjian

that broker-dealers affiliated with insurance companies perform a much narrower range of services and that the companies with which they are affiliated have structured their operations based on the current definition and would be presented with significant new economic and administrative costs in order to comply with the proposed definition.[35] The commenters stated that over 50 percent of NASD's registered representatives work for broker-dealers affiliated with life insurers,[36] and that the proposal therefore would have a significant financial impact on the life insurance industry.[37] One commenter represented that the new definition would cause its number of branch offices to increase from 42 to 1,100,[38] while another said that it would expect approximately 3,400 additional branch offices,[39] in each case resulting in a sharp increase in overall expenses due to increased paperwork and registration fees. One commenter pointed out that this sharp increase in the number of branch offices would necessitate amendment of its NASD membership agreement.[40] Commenters submitting Letter Type B stated that the proposal would place an ''unfair burden on broker-dealers conducting business through many smaller, geographically dispersed non-branch offices.'' [41]

NASD responded to these concerns, saying that it recognizes that certain firms may be required to register previously unregistered locations under the proposed definition and that, while this ''may increase a firm's registration costs, NASD believes that a firm's administrative and supervision costs for all locations should not increase as a result of this proposal.'' [42] Quite the contrary, NASD stated that ''the development of a centralized branch office registration system through CRD® will alleviate current registration burdens, thus making branch office registration and renewal a more efficient process.'' [43]

Two commenters stated that NASD has made no attempt to evaluate or quantify the economic burden the proposal would pose,[44] and stated their belief that NASD should be required to address specifically the economic impact of the proposed rule change on insurance affiliated broker-dealers and individual broker-dealers in geographically dispersed locations and determine how many new branches would be created by the proposed change.[45] These commenters stated that the new definition would impose unreasonable and unnecessary burdens on competition, and that the proposed rule change does not meet the statutory safeguards for competition set forth in Sections 23(a)[46] and 15A(b)(6) and (9)[47] of the Act.[48] Commenters predicted that the proposed definition would cause enormous structural and economic upheaval.[49]

NASD disagreed with these commenters' assertions that the proposal is anticompetitive and will unnecessarily add to their costs of doing business. NASD stated that the supervision requirements of NASD Rule 3010 have always applied to all offices, regardless of whether such locations are registered, and that NASD Rule 3100 requires all members to comply with the Commission's Books and Records Rules. NASD stated that the proposed branch office definition does not amend either of these rules.[50] In NASD Response Letter 2, the NASD stated that ''the annual registration fee for branch offices is reasonable and fair, and does not unfairly discriminate against any particular segment of our membership.'' [51] NASD continued, stating that it ''believes that this fee should not create an undue economic burden for an active business location,'' and affirmed its statement in the Notice that the proposal ''does not create an impact on competition that is not necessary or appropriate in furtherance of the purposes of the Act.'' [52]

Two commenters noted that whether a location is registered as a branch office has no impact on a firm's responsibility to supervise its registered representatives since broker-dealers are required to visit both registered and non-registered offices on a periodic basis,[53] and others likewise stated that the current system is more than adequate.[54] A number of commenters opined that the proposed rule change constitutes a new fee that is a revenue raiser, and is not intended to provide any additional oversight or support for consumers.[55] In response to this point, NASD noted that if there are as many new branch offices as commenters suggest, NASD will be facing a significant increase in the number of previously unregistered locations subject to the more rigorous examination protocol of branch offices, requiring NASD to devote additional staff time and resources. In addition, NASD is incurring costs related to the development of the new CRD® branch office registration system and will continue to incur costs associated with the maintenance and operation of the new system. Based on these factors, NASD stated that it ''believes that NASD's annual branch office registration fee is reasonable and fair.'' [56]

Many commenters, including those submitting comments on Letter Type A, stated that the high administrative burden of the proposed rule change would have a harmful impact on consumers because limited purpose broker-dealers would find it not economically feasible to continue offering variable products and mutual funds to their clients.[57] The commenters said that this could ''only have a harmful impact on consumers since their access to these products, which often constitute an important part of [their] clients' overall financial planning, will likely be reduced or eliminated.'' [58] NASD responded, stating that ''there are certain fundamental costs associated with regulating any branch office, regardless of the size or activity,'' and that it believes that assessing the same fee on each branch office results in an equitable allocation of a reasonable fee among its members.[59]

Many commenters also commented on specific aspects of the proposed

Letter, Halstead Letter, Hoelzel Letter, Howen Letter, IARFC Letter, Imke Letter, Jacobsen Letter, Lisle Letter, Northrop Letter, NYLife Letter, Ridings Letter, and Letter Type A, *supra* note 6.

[35] *See, e.g.*, Letter Type A, *supra* note 6.

[36] *See* ACLI Letter 2, NAIFA Letter, NYLIFE Letter, and Letter Type B, *supra* note 6.

[37] *See* NAIFA Letter, NYLIFE Letter, Princor Letter, and Letter Type B, *supra* note 6.

[38] *See* Princor Letter, *supra* note 6.

[39] *See* NYLIFE Letter, *supra* note 6.

[40] *Id.*

[41] *See* Letter Type B, *supra* note 6.

[42] *See* NASD Response Letter, *supra* note 7.

[43] *Id.*

[44] *See* ACLI Letter, ACLI Letter 2, and NYLIFE Letter, *supra* note 6.

[45] *See* NYLIFE Letter, *supra* note 6.

[46] 15 U.S.C. 78w(a).

[47] 15 U.S.C. 78*o*–3(b)(6) and (9).

[48] *See* ACLI Letter, ACLI Letter 2, and NYLIFE Letter, *supra* note 6.

[49] *See* ACLI Letter 2 and NAIFA Letter, *supra* note 6.

[50] *See* NASD Response Letter, *supra* note 7.

[51] *See* NASD Response Letter 2, *supra* note 9.

[52] The current annual registration fee for each branch office is $75. *Id.*

[53] *See* MetLife Letter and Princor Letter, *supra* note 6.

[54] *See* Bieber Letter and NYLIFE Letter, *supra* note 6.

[55] *See* Bieber Letter and Letter Type B, *supra* note 6.

[56] *Id.*

[57] *See* Branson Letter, Claborn Letter, Fowler Letter, Garcia Letter, Gruber Letter, Gurdjian Letter, Halstead Letter, Hoelzel Letter, IARFC Letter, Imke Letter, Jacobsen Letter, Lisle Letter, Mersberger Letter, NAIFA Letter, Olshanski Letter, Ridings Letter, Vega Letter, Villasenor Letter, Walenta Letter, and Letter Type A, *supra* note 6.

[58] *See, e.g.*, Letter Type A, *supra* note 6.

[59] *See* NASD Response Letter, *supra* note 7.

definition. Several commenters stated that the conditions for the primary residence exception are too restrictive.[60] Several commenters objected to the requirement that customer funds not be handled at the primary residence, saying that it was too restrictive[61] and that the term ''handled'' was not sufficiently defined.[62] One commenter suggested modifying the proposal to include a time limitation or other qualifying parameter for defining the term ''handled.''[63] Two commenters objected to the requirement that electronic communications be made through the member firm's system, saying that the requirement is too restrictive and assumes that all firms have and permit e-mail.[64] These commenters stated that it should be sufficient that the associated person is subject to the firm's supervision.[65] Four commenters objected to the requirement that the associated person not meet with customers at the primary residence location,[66] and suggested that the proposal be modified to require that the associated person not ''regularly'' meet with customers at that location.[67]

NASD responded to these comments, stating that it ''believes strongly that the limitations on the use of a primary residence are important safeguards intended to protect investors.'' NASD said that activities outside the scope of the conditions set forth in the proposed definition should be subject to the monitoring and examination by regulators. NASD continued, stating ''[m]oreover, to the extent any particular scenario raises questions as to the meaning of any of these limitations, NASD believes such issues can be addressed, as appropriate, through its interpretive process without requiring amendment to the proposed rule.''[68]

One commenter pointed out that the definition would deem remote electronic traders to be conducting a securities business and therefore be required to register as a branch office if they were not able to meet the terms of the primary residence exclusion.[69] In response, NASD reiterated that ''to the extent any particular scenario raises questions regarding the application of the rule, NASD will address such issues with members through its interpretative process on a case-by-case basis or through future rulemaking, as appropriate,'' rather than granting them a general exemption from branch office registration.[70] Another commenter noted that certain state rules require on-site registered principals be present in state branches, saying that NASD should coordinate with the state requirements.[71]

Several commenters objected to the provision that would exclude a location used primarily for non-securities business from the definition of branch office, provided that less than 25 securities transactions are effected there annually, saying that the numerical limitation seems arbitrarily chosen without a quantifiable foundation and objecting to the lack of an explanation for how the limitation was determined.[72] Commenters stated that the language was not sufficiently clear and queried how to define ''effected,'' and stated that the proposed rule change lacks clarity as to whether firms must maintain records to demonstrate the availability of the exception.[73] Commenters stated that the proposed definition would place an undue burden on firms to track the number of transactions effected from a particular location.[74]

NASD stated that it believes that the 25-transaction limit is reasonable and necessary to promote investor protection, and that a location that engages in a significant number of securities transactions annually should be subject to examination by regulators to ensure that the activities at such location are in compliance with applicable rules and regulations.[75] NASD stated that, with respect to the term ''effects,'' the meaning is fact specific, and NASD ''will address these interpretive issues with members on a case-by-case basis, as appropriate.''[76]

Two commenters pointed out that no effective date was provided,[77] while others stated that the proposed branch office definition should not be bifurcated from the proposed Form BR.[78] NASD expects to make the proposed rule change effective the first quarter of 2006, following the implementation of proposed Form BR and the accompanying deployment of branch office functionality in CRD®, which it believes will occur in the Fall of 2005.[79]

A number of commenters suggested amendments to the proposal. Many of the commenters concerned about the impact the new definition would have on limited purpose broker-dealers affiliated with insurance companies requested that the filing fee be waived for current non-branch offices that become branch offices under the new definition.[80] Three commenters suggested that NASD provide a permanent exclusion from the branch office definition for non-branch locations distributing variable contracts.[81] In response to these comments, NASD stated that, while it recognizes that ''life insurance broker-dealers operate with a different business model than many large, wirehouse, full-service firms, NASD believes there is no basis for recognizing a separate category of broker-dealers in connection with the registration of branch offices.''[82]

Many of these commenters also requested an increase in the number of transactions that may be effected from a location used primarily for non-securities business before that location is considered a branch office.[83] One of these commenters suggested that a gross dealer concession should be used as a threshold for registration because it would allow for easy tracking by the broker-dealer and satisfactory criteria for regulators in registered offices over a certain size.[84] As discussed above, NASD responded to these comments stating that it believes that the 25-transaction limit is reasonable and

[60] *See* InterSecurities Letter, Jacobsen Letter, NYLIFE Letter, Princor Letter, TFA Letter, and Letter Type A, *supra* note 6.

[61] *See* InterSecurities Letter, MetLife Letter, NYLIFE Letter, Princor Letter, and TFA Letter, *supra* note 6.

[62] *See* InterSecurities Letter and TFA Letter, *supra* note 6.

[63] *See* MetLife Letter, *supra* note 6.

[64] *See* InterSecurities Letter and TFA Letter, *supra* note 6.

[65] *Id.*

[66] *See* ARM Letter, MetLife Letter, Princor Letter, and SIA Letter, *supra* note 6.

[67] *See* ARM Letter, MetLife Letter, and SIA Letter, *supra* note 6.

[68] *See* NASD Response Letter, *supra* note 7.

[69] *See* Uhlenhop Letter, *supra* note 6.

[70] *See* NASD Response Letter 3, *supra* note 11.

[71] *See* 1st Global Letter, *supra* note 6.

[72] *See* ACLI Letter 2, InterSecurities Letter, Princor Letter, and TFA Letter, *supra* note 6.

[73] *See, e.g.*, NYLIFE Letter, *supra* note 6.

[74] *See* InterSecurities Letter, NYLIFE Letter, and TFA Letter, *supra* note 6.

[75] *See* NASD Response Letter, *supra* note 7.

[76] *Id.*

[77] *See* InterSecurities Letter and TFA Letter, *supra* note 6.

[78] *See* ACLI Letter 2, NYLIFE Letter, and TFA Letter, *supra* note 6.

[79] *See* Amendment No. 6, *supra* note 11.

[80] *See* Branson Letter, Claborn Letter, Fowler Letter, Garcia Letter, Gruber Letter, Gurdjian Letter, Halstead Letter, Hoelzel Letter, IARFC Letter, Imke Letter, Jacobsen Letter, Lisle Letter, Mersberger Letter, NAIFA Letter, Olshanski Letter, Ridings Letter, and Letter Type A, *supra* note 6.

[81] *See* ACLI Letter 2, Ehlert Letter, and Howen Letter, *supra* note 6.

[82] *See* NASD Response Letter, *supra* note 7.

[83] *See* Branson Letter, Fowler Letter, Garcia Letter, Gruber Letter, Gurdjian Letter, Halstead Letter, Hoelzel Letter, IARFC Letter, Imke Letter, Jacobsen Letter, Lisle Letter, Mersberger Letter, NAIFA Letter, Olshanski Letter, Princor Letter, Ridings Letter, and Letter Type A, *supra* note 6.

[84] *See* 1st Global Letter and Princor Letter, *supra* note 6.

necessary to promote investor protection.[85]

Many of the commenters urged the Commission to reject the proposed rule change[86] and many suggested that NASD maintain the current branch office registration.[87] One of these commenters stated that NASD's current branch office definition provides the necessary safeguards to protect investors,[88] while another queried why NASD's current definition was not selected as the uniform definition.[89] Another commenter stated that the recent amendments to Rule 17a–4 provide sufficient regulatory oversight.[90] NASD responded that the new branch office registration system will allow NASD and other regulators to associate every registered representative with a specific branch office, a feature that is unavailable under the current system, and that this will provide an ''essential tool for regulators when conducting examinations, reviewing customer complains, or taking enforcement actions.'' NASD also stated that the uniform definition would allow for the development of a centralized branch office registration system through CRD® (that will allow regulators to quickly and efficiently access this information and keep it current.[91] NASD continued, stating that it ''strongly believes that the Proposal serves a legitimate regulatory purpose and that the impact on competition to certain member firms as a result of the Proposal is both necessary and appropriate in furtherance of these legitimate regulatory purposes.'' [92]

IV. Discussion and Commission's Findings

After careful consideration of the proposed rule change, the comment letters, and NASD's responses to the comment letters, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[93] The Commission believes that the proposed rule change is consistent with Section 15A(b) of the Act,[94] in general, and furthers the objectives of Section 15A(b)(6),[95] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

Given the continued advances in technology used to conduct and monitor businesses and changes in the structure of broker-dealers and in the lifestyles and work habits of the workforce, the Commission believes it is reasonable and appropriate for NASD to reexamine how it determines whether business locations need to be registered as branch offices of broker-dealer members. The Commission also supports NASD, the NYSE, and state securities regulators' joint, regulatory effort to eliminate inconsistencies and duplication in developing a uniform definition of ''branch office.'' The Commission believes that such regulatory coordination and cooperation should result in an effective and efficient regulation that will serve the entire broker-dealer community by recognizing the many different business models and streamlining the branch office registration process significantly. In addition, the Commission believes the proposed definition strikes the right balance between providing flexibility to broker-dealer firms to accommodate the needs of their associated persons, while at the same time setting forth parameters that should ensure that all locations, including home offices, are appropriately supervised.

The Commission commends the NASD for reiterating the responsibility of firms to supervise their associated persons, regardless of their location, and is concerned by the statements of some commenters that this proposed rule change will impose additional supervisory duties on them. The Commission reminds all broker-dealers of their statutory duty to supervise.[96] Furthermore, the Commission believes the ability to identify the personnel located at each branch office is an important improvement to the CRD® database and will provide regulators valuable information. The Commission is cognizant of the concerns raised by the ACLI and others in the insurance industry who are also in the securities industry. However, the Commission is also aware that firms with large numbers of associated persons located in smaller, geographically dispersed offices provide additional supervisory challenges, and will require NASD to devote additional staff time and resources to their oversight, once these offices become subject to the more rigorous examination protocol of branch offices.

Furthermore, the Commission believes that the seven proposed exceptions to registering as a branch office will recognize current business, lifestyle, and surveillance practices and provide associated persons with additional flexibility. For instance, because associated persons may have to work from home due to illness, or to provide childcare or eldercare for certain family members, the Commission believes it is appropriate to except primary residences from the definition of branch office while providing certain safeguards and limitations to protect investors. In this regard, the Commission supports NASD's decision to omit the proposed 50-business day limitation on working from a primary residence from NASD's proposed definition, and the NYSE's subsequent removal of this limitation from its proposed definition. Moreover, the definition also would exempt from branch office registration any temporary location, other than the primary residence, provided it is used less than 30 business days in any calendar year.

The Commission believes it reasonable for NASD not only to propose conditions on the primary residence and temporary location exceptions (*e.g.*, that the location cannot be held out to the public as an office, and that neither customer funds nor securities can be handled there), but also to set forth the interpretive material in proposed NASD IM–3010–1 to emphasize members' requirements to establish reasonable supervisory procedures and conduct reviews of locations taking into account the factors such as those enumerated therein.

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[85] *See* NASD Response Letter, *supra* note 7.

[86] *See* Branson Letter, Claborn Letter, Ehlert Letter, Fowler Letter, Garcia Letter, Geis Letter, Gruber Letter, Gurdjian Letter, Halstead Letter, Hoelzel Letter, Howen Letter, IARFC Letter, Imke Letter, Jacobsen Letter, Lisle Letter, Mersberger Letter, NAIFA Letter, Northrop Letter, O'Bee Letter, Olshanski Letter, Ridings Letter, Scott Letter, Letter Type A and Letter Type B, *supra* note 6.

[87] *See* ACLI Letter 2, Branson Letter, Claborn Letter, Fowler Letter, Garcia Letter, Geis Letter, Gruber Letter, Gurdjian Letter, Halstead Letter, Hoelzel Letter, IARFC Letter, Imke Letter, Jacobsen Letter, Lisle Letter, Mersberger Letter, NAIFA Letter, Northrop Letter, Olshanski Letter, Princor Letter, Ridings Letter, Letter Type A and Walenta Letter, *supra* note 6.

[88] *See* Princor Letter, *supra* note 6.

[89] *See* ACLI Letter 2, *supra* note 6.

[90] *See* NYLIFE Letter, *supra* note 6.

[91] *See* NASD Response Letter 2, *supra* note 9.

[92] *Id.*

[93] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[94] 15 U.S.C. 78*o*–3(b).

[95] 15 U.S.C. 78*o*–3(b)(6).

[96] *See* Section 15(b)(4)(E) of the Act. 15 U.S.C. 78*o*(b)(4)(E).

In addition, under both exceptions noted above, NASD has provided additional flexibility by defining ''business day'' to exclude any partial day, provided the associated person spends at least four hours on such business day at his or her designated branch office during the hours such office is normally open for business. The Commission believes that this should prevent associated persons from regularly conducting business from other remote locations for the majority of a business day, without such activity being counted towards the 30-day limitation. The Commission expects NASD to monitor and ensure that, where the 30-business day (other location) exemption is used by associated persons, members maintain records adequate to demonstrate compliance with the ''business day'' limitations.

Finally, the Commission believes it is reasonable for NASD to implement the proposed branch office definition following the commencement of the branch office registration system on the CRD®. This should allow a smooth transition to the new branch office registration system by, as NASD submits, providing members sufficient time to transition to the proposed new Form BR and associated filing protocols, before making the new definition effective.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities association, and, in particular, Section 15A(b) of the Act.[97]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[98] that the proposed rule change (SR–NASD–2003–104), as amended by Amendment Nos. 1 through 6, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[99]

Jonathan G. Katz,

Secretary.

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[97] 15 U.S.C. 78*o*–3(b).

[98] 15 U.S.C. 78s(b)(2).

[99] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52402; File No. SR–NYSE–2002–34]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 to the Proposed Rule Change Relating to the Amendment of Rule 342 (Offices-Approval, Supervision and Control) To Provide for a Uniform Definition of ''Branch Office''

September 9, 2005.

I. Introduction

On August 16, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 342 (''Offices-Approval, Supervision and Control'') to provide for a new definition of the term ''branch office.'' On October 22, 2002, the NYSE submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on December 4, 2002.[4] The Commission received five comment letters with respect to the proposal, as amended.[5] In addition, the Commission received seven comment letters with respect to a similar filing by the National Association of Securities Dealers, Inc. (''NASD'')[6] that specifically addressed the NYSE's proposed rule change.[7] On March 31, 2003, the Exchange filed a response to the comment letters,[8] and on April 20, 2004, and August 25, 2005, the Exchange filed Amendment Nos. 2[9] and 3[10] to the proposed rule change, respectively. This order approves the proposed rule change, as amended by Amendment No. 1; grants accelerated approval to Amendment Nos. 2 and 3 to the proposed rule change; and solicits comments from interested persons on Amendment Nos. 2 and 3.

II. Description of the Proposal

Current NYSE Rule 342(c) requires that a member or member organization obtain the Exchange's prior written consent for each office established other than a main office. Office is generally defined as any location—other than a main office-from which the business of the member or member organization is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated October 21, 2002 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 46888 (November 22, 2002), 67 FR 72257 (''Notice'').

[5] *See* letters to Jonathan G. Katz, Secretary, Commission from Arthur F. Grant, President, Cadaret Grant, dated December 17, 2002 (''Cadaret Letter'') and Brian C. Underwood, Senior Vice President—Director of Compliance, A.G. Edwards & Sons, Inc., dated December 18, 2002 (''A.G. Edwards Letter 1'') and December 27, 2002 (''A.G. Edwards Letter 2''); letter to Secretary, Commission from Kimberly H. Chamberlain, Vice President and Counsel, State Government Affairs, Securities Industry Association, dated December 23, 2002 (''SIA Letter 1''); and e-mail to Katherine A. England, Assistant Director, Division, Commission from Jeffrey P. Halperin, Assistant Vice President, Corporate Ethics and Compliance, Metropolitan Life Insurance Company, dated January 7, 2003 (''MetLife Letter 1'').

[6] *See* Securities Exchange Act Release No. 48897 (December 9, 2003), 68 FR 70059 (December 16, 2003) (SR–NASD–2003–104).

[7] *See* letters to Commission from Thomas Moriarty, President, InterSecurities, Inc., dated January 6, 2004 (''InterSecurities Letter''), Christopher Shaw, Vice President & Acting Chief Compliance Officer, Transamerica Financial Advisors, Inc., dated January 6, 2004 (''TFA Letter''); letters to Jonathan G. Katz, Secretary, Commission from Leonard M. Bakal, Vice President and Compliance Director, Metropolitan Life Insurance Company, dated January 14, 2004 (''MetLife Letter 2''), Mario DiTrapani, President, Association of Registration Management, dated January 6, 2004 (''ARM Letter''); John Polanin, Jr., Chairman, Self-Regulation and Supervisory Practices Committee, Securities Industry Association, dated January 9, 2004 (''SIA Letter 2''); and letters to Secretary, Commission from John Gilner, Vice President, Henry H. Hopkins, Vice President, and Sarah McCafferty, Vice President, T. Rowe Price Investment Services, Inc., dated January 5, 2004 (''Investment Services Letter''), and Minoo Spellerberg, Compliance Director, Princor Financial Services Corporation, dated February 6, 2004 (''Princor Letter'').

[8] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division, Commission, dated March 27, 2003 (''Response to Comments'').

[9] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division, Commission, dated April 19, 2004 (''Amendment No. 2''). In Amendment No. 2, the Exchange responded to comments and amended proposed NYSE Rule 342.10 by eliminating the 50-day limitation from its primary residence registration exception and adding a provision relating to supervisory procedures of primary residences and risk-based sampling criteria. *See also* discussion of Amendment No. 2 in Section II, Description of the Proposal, *infra.*

[10] *See* Form 19b–4 dated August 25, 2005 (''Amendment No. 3''). In Amendment No. 3, the Exchange amended proposed NYSE Rule 342.10 and its discussion to clarify certain points made in Amendment No. 2, issues related to the timing of the adoption of the Exchange's new definition of branch office, and other issues related to the Exchange's definition of branch office as compared with the NASD's rule proposal. *See also* discussion of Amendment No. 3 in Section II, Description of the Proposal, *infra.*

conducted. Locations such as primary residences, operations offices/centers, temporary locations, and offices of convenience are all required to be registered as branch offices.[11]Continued advances in technology used by firms to conduct, monitor, and surveil the activities at their branch offices and other remote locations, as well as changes in the structure of broker-dealers and in the lifestyles and work habits of the work force, have caused the Exchange to reexamine whether all business locations continue to need to be registered as branch offices of members and member organizations.

There is currently no uniform standard that regulators use in defining this term. These disparate definitions impose unintended burdens on common members and member organizations in the form of compliance with multiple and different definitions of branch office, the filing of multiple forms to register and/or renew registration of such locations, different filing deadlines for such registrations, and continued monitoring of the rules of multiple self-regulatory organizations (''SROs'') and states for changes.[12]

The Exchange has participated in a joint regulatory initiative with the NASD and state securities regulators to develop a uniform definition of ''branch office'' in an attempt to eliminate unnecessary burdens on members. The Exchange, the NASD and the North American Securities Administrators Association (''NASAA'') have worked together to propose a uniform definition of branch office.[13] Accordingly, the Exchange proposes to amend NYSE Rule 342 to provide for a new definition of the term ''branch office.'' The proposed amendment to the rule would limit the requirement to register certain business locations as branch offices to account for advances in technology used to conduct and monitor business, changes in the structure of broker-dealers and in the lifestyles and work habits of associated persons of broker-dealers.

As proposed, the term ''branch office'' would mean any location [14] where one or more associated persons of a member or member organization regularly conducts the business of effecting any transactions in, or inducing or attempting to induce, the purchase or sale of any security, or where such location is held out as a branch office.[15] The definition would provide for exceptions as noted below. The proposed definition would substantially mirror the Commission's definition of ''office'' in its Books and Records rules (SEC Rules 17a–3 and 17a–4) under the Act.[16] As noted above, the NASD has also filed with the Commission a proposed new branch office definition, which is substantially similar to the Exchange's proposal.[17]

Attempting to recognize current business, lifestyle, and surveillance practices, the Exchange provides flexibility in the form of seven exceptions from the proposed branch office registration requirement.[18] As discussed in the Notice,[19] in developing a definition, the NYSE considered the evolving nature of its members' and member organizations' business models and proposed exceptions to the registration requirement accordingly. For instance, any office of convenience, where an associated person occasionally and exclusively by appointment meets with customers and which is not held out to the public as a branch office, would be exempt from registering as a branch office.[20] Other than meeting customers at these offices of convenience, all other functions of the associated person would be conducted and supervised through the designated branch office.

The Exchange also proposes to exempt primary residences from the definition of branch office. In exempting primary residences, the Exchange imposes limitations on such locations to ensure that all activity is appropriately supervised and monitored by the firm. The limitations provide that: only one associated person, or multiple associated persons, who reside at that location and are members of the same immediate family, conduct business at the location; the location not be held out as a branch office; the associated person be assigned to a designated branch office for supervision, and such office be reflected on all business cards, stationery, advertisements, and communications to the public; the associated person not meet with customers at his or her residence; neither customer funds nor securities be handled at that location; the associated person's correspondence and communications with the public be subject to all supervisory provisions of the Exchange's rules including, but not limited to, NYSE Rules 342 and 472; [21] electronic communications, including e-mails, be made through the firm's electronic system; all orders be entered through the designated branch office or an electronic system established by the member or member organization that is reviewable at the branch office; [22] written supervisory procedures relating to the supervision of sales activities conducted at the residence be maintained by the member or member organization; and a list of the locations be maintained by the member or member organization.[23]

The definition would also exempt from branch office registration any temporary location, other than the primary residence discussed above, that is used for securities business [24] for less than 30 business days in any calendar year. In granting this exemption, the NYSE imposes most of the same safeguards noted above for the exemption granted for a primary residence.[25]

[11] *See* Amendment No. 2, *supra* note 9.

[12] *Id.*

[13] *Id.*

[14] Amendment No. 3 deleted the exclusion ''other than the main office'' from the definition of branch office as initially proposed. *See* Amendment No. 3, *supra* note 10.

[15] For purposes of this rule, the term ''associated person of a member or member organization'' would be defined in proposed NYSE Rule 342.10 as a member, allied member, or employee associated with a member or member organization. *Id.*

[16] 17 CFR 240.17a–3 and 17a–4.

[17] *See* SR–NASD–2003–104, *supra* note 6. The Commission is simultaneously approving the NASD's proposed rule change. *See* Securities Exchange Act Release No. 52403 (September 9, 2005).

[18] *See* proposed NYSE Rule 342.10 (A) through (G) and Amendment No. 2, *supra* note 9.

[19] *See* Notice, *supra* note 4.

[20] For example, bank-owned members and member organizations often establish small offices on bank premises, whereby a registered representative would be designated to a parent branch for supervision, but would visit different bank branches occasionally, and by appointment only, to meet with customers. Under the proposed definition, such locations would be exempt from registering as branch offices, where the bank location is not held out as a branch office. In exempting such offices of convenience from branch office registration, the NYSE imposed important safeguards for the public. In this regard, at such offices of convenience, associated persons would be limited to meeting customers occasionally and exclusively by appointment. Furthermore, at bank locations, the only permitted signage such offices of convenience could display, under regulations promulgated by the Office of the Comptroller of the Currency, would be ones advertising to the public that ''non-deposit investment products'' are being offered at such locations in order to prevent confusing customers who might otherwise believe that traditional riskless investments, such as deposits, are being offered by associated persons at such offices located on bank premises. *Id.*

[21] *See* Amendment No. 3, *supra* note 10.

[22] *Id.*

[23] The NYSE had originally proposed a limitation that the associated person's primary residence be used for less than 50 business days in one calendar year. However, as discussed further, the Exchange eliminated the 50-day limitation from the proposed primary residence exception in response to comments. *See* Amendment No. 2, *supra* note 9.

[24] *See* Amendment No. 3, *supra* note 10.

[25] The NYSE proposes to define ''business day'' to exclude any partial day, provided the associated person spends at least four hours on such business day at his or her designated branch office during the

Continued

In addition, the definition would exempt from registration locations where associated persons are primarily engaged in non-securities activities (*e.g.*, insurance) and from which an associated person effects no more than 25 securities transactions in a calendar year, provided that advertisements or sales literature identifying such location also set forth the location from which the associated persons would be directly supervised. Further, such activities attendant to the primary function and performed as an occasional accommodation to customers would be conducted through and supervised by the associated person's designated registered branch office.

Similarly, the new definition would exempt non-sales locations, *e.g.*, where operations activities are conducted, from registering as a branch office. Such locations would have to be established solely for customer service and/or back office functions, not be held out to the public as a branch office, and no sales activities would be conducted from such locations.[26]

However, as discussed further in Amendment No. 3 below, the Exchange also proposes that, notwithstanding the exclusions in NYSE Rule 342.10 (A)–(G), any location that is responsible for supervising the activities of persons associated with a member or member organization at one or more non-branch locations of such member or member organization would be considered to be a branch office.[27] The Exchange is proposing this change in order to conform with a comparable provision in the NASD's rule proposal.[28]

Amendment No. 2

The difference between the NYSE's definition of branch office as initially proposed and the NASD's definition concerns the registration of certain primary residences as branch offices. The NASD proposes a functionality test to determine whether primary residences should register as a branch office, considering limitations on the activities that could be performed.[29] In addressing the use of primary residences, important safeguards and limitations were imposed by both SROs on such locations to provide for the monitoring and oversight of activities. As originally proposed, the NYSE's primary residence registration exception incorporated the same limitations as the NASD, but also limited to 50, the number of business days associated persons would be permitted to engage in securities activities in their primary residences without requiring such residences to register as a branch office.

However, as discussed in more detail below, after analysis of the comments received from and related discussions with members and member organizations, the Exchange now proposes to eliminate the 50-day limitation from its primary residence registration exception. In eliminating the 50-day limitation on primary residences, the Exchange acknowledges that technological advances in surveillance/monitoring capabilities should help address the concerns noted above while accommodating evolving lifestyles and work habits of the industry. At the same time, the Exchange wishes to impose appropriate regulatory/supervisory safeguards to help ensure that members and member organizations properly supervise such locations.

As proposed in Amendment No. 2 and slightly amended in Amendment No. 3, Exchange members' and member organizations' written supervisory procedures would have to include criteria for on-site for cause reviews of an associated person's primary residence. Such reviews would have to utilize risk-based sampling or other techniques designed to assure compliance with applicable securities laws and regulations and with NYSE rules.[30] Factors which should be considered when developing risk-based sampling techniques to determine the appropriateness of on-site for cause reviews of selected residences and other remote locations would have to include, at a minimum: (1) The firm's size; (2) the firm's organizational structure; (3) the scope of business activities; (4) the number and location of offices; (5) the number of associated persons assigned to a location; (6) the nature and complexity of products and services offered; (7) the volume of business done; (8) whether the location has a Series 9/10-qualified person on-site; (9) the disciplinary history of the registered person or associated person, including a review of such person's customer complaints and Forms U4 and U5; and (10) the nature and extent of a registered person's or associated person's outside business activities, whether or not related to the securities business.[31]

Additional criteria should be utilized if applicable to the nature and type of business conducted by the member or member organization and the individual registered person(s) involved. Such supervisory procedures would, in the aggregate, be required to be sufficient to ensure compliance with the securities laws and Exchange rules.

Given that such locations are physically remote from registered branch offices, members and member organizations, in establishing supervisory procedures, would have to be particularly proactive and preemptive in their approach to supervision. As a matter of reasonable supervision, firms should, before granting permission to work at these remote locations, review all applicable criteria to determine whether such person should be permitted to work at such location and whether he/she requires heightened supervision.

The Exchange believes that initial review/approval, ongoing monitoring, and follow-up with respect to outside business activities by registered persons, whether or not related to the securities business, is particularly important, especially when such activities are conducted from such person's residence. The Exchange believes that, given the nature of these locations, registered persons could utilize their outside business activities to conceal violations of Commission and SRO rules. Accordingly, in developing risk-based criteria to determine the extent and frequency of on-site reviews, members and member organizations should give particular weight to this factor.

The Exchange believes that the regulatory approach adopted by the Exchange for these locations is consistent with the approach that the Commission recently articulated in its Staff Legal Bulletin No. 17: Remote Office Supervision, regarding the supervision of small, remote offices.[32] Supervisory procedures, which do not address the minimum requirements noted above, would be deemed inadequate for purposes of NYSE Rule 342, and could subject members and member organizations to disciplinary action for failure to supervise.[33] The

hours such office is normally open for business. *See* NYSE Rule 342.10 explanatory material.

[26] The definition would also exempt the Floor of a registered national securities exchange where a member or member organization conducts a direct access business with public customers and a temporary location established in response to the implementation of a business continuity plan. *See* proposed NYSE Rule 342.10 (F) and (G).

[27] *See* proposed NYSE 342.10 explanatory material and Amendment No. 3, *supra* note 10.

[28] *See* SR–NASD–2003–104, *supra* note 6.

[29] *Id.*

[30] *See also* Amendment No. 3, *supra* note 10. Similarly, written supervisory procedures for such residences and other remote locations would have to be designed to assure compliance with applicable securities laws and regulations and with NYSE rules. *See* Amendment No. 2, *supra* note 9.

[31] *See also* Amendment No. 3, *supra* note 10.

[32] *See* Division, SEC, Staff Legal Bulletin No. 17, dated March 19, 2004.

[33] Whereas the federal securities laws, Section 15(b)(4)(E) of the Act, 15 U.S.C. 78*o*(b)(4)(E),

Exchange will be reviewing such procedures and their implementation as part of its regular examination of members and member organizations.

Amendment No. 3

In Amendment No. 3, the Exchange proposed additional changes to its rule text and discussion to clarify certain points made in Amendment No. 2, other issues related to the Exchange's definition of branch office as compared with the NASD's rule proposal, and issues related to the adoption of the Exchange's new branch office definition.

The Exchange proposes the following changes to NYSE Rule 342:

i. In NYSE Rule 342.10, the phrases ''other than the main office,'' and ''(''associated person'')'' have been deleted from the definition of branch office. In deleting the qualifier ''other than the main office,'' the Exchange is recognizing instances where a member organization's activities taking place in the main office (*e.g.*, where one or more associated persons of a member or member organization regularly conduct the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or is held out as a branch office), would place the main office in the purview of the definition, and thus it should be registered as a branch office. Further, branch office registration would be triggered where associated persons are domiciled in the main office of a member or member organization and are engaging in the above activities. Accordingly, the Exchange recognizes that whether an office is a branch office is a function of the activities performed at the office even if such activities are performed at the main office. In addition, the latter deletion is being made by the NYSE to maintain a uniform definition of branch office.

ii. The text of Rule 342.10(B)(v) has been changed from ''the associated person's correspondence and communications with the public are subject to the firm's supervision'' to ''the associated person's correspondence and communications with the public are subject to all supervisory provisions of the Exchange's rules including, but not limited to, Rules 342 and 472.'' This change was made to eliminate any possible ambiguity that might have suggested that associated persons working from home were subject to supervisory standards different from those of other associated persons subject to the supervision of a member or member organization.

iii. The text of Rule 342.10(B)(vi) has been changed from ''electronic communications (*i.e.*, e-mail) are made through the member organization's electronic system'' to ''electronic communications (*e.g.*, e-mail) are made through the member's or member organization's electronic system.'' This change was made to indicate that e-mail is only an example of electronic communications covered by the rule and to make it consistent with other sections in the rule.

iv. The following changes have been made to conform to the NASD's rule proposal. NYSE Rule 342.10(B)(vii) has been changed to include orders entered in an electronic system established by the member or member organization that is reviewable at the branch office. NYSE Rule 342.10(C) has been changed by adding ''securities business for'' to clarify that primary residences excluded from the definition of branch office may be used, on a limited basis, for securities business.

v. In NYSE Rule 342.10 explanatory material, the phrase ''[t]he term 'business day' as used herein'' has been changed to ''[f]or purposes of this Rule, the term 'business day' '' to make its wording consistent with the wording used in other definitions in this section.

vi. In NYSE Rule 342.10 explanatory material, the sentence ''[t]he term an 'associated person of a member' for purposes of this Rule means member, allied member or employee associated with a member or member organization'' has been changed to ''[f]or purposes of this Rule, the term 'associated person of a member or member organization' is defined as a member, allied member, or employee associated with a member or member organization'' to make its wording consistent with the wording used in other definitions in this section.

vii. A new paragraph is being added to the Rule 342.10 explanatory material. As proposed, it provides that ''notwithstanding the exclusions in subparagraphs 342.10(A)–(G), any location that is responsible for supervising the activities of persons associated with a member or member organization at one or more non-branch locations of such member or member organization is considered to be a branch office.'' The Exchange thus recognizes instances where such locations could be discharging supervisory activities that warrant their registration as branch offices with the attendant regulatory responsibility and oversight. This amendment is being proposed to conform with a comparable provision in the NASD's rule proposal.

viii. In NYSE Rule 342.10 explanatory material, the term ''sufficient'' has been deleted from the sentence ''[f]or purposes of Rule 342.10(B)(viii) and (C), written supervisory procedures for such residences and other remote locations must be designed to assure compliance with applicable securities laws and regulations and with NYSE Rules,'' to make it more consistent with the prior sentence, ''[f]or purposes of Rule 342.10(B)(viii), written supervisory procedures shall include criteria for on-site for cause reviews of an associated person's primary residence. Such reviews must utilize risk-based sampling or other techniques designed to assure compliance with applicable securities laws and regulations and with NYSE rules.''

ix. The Supplementary Material section of NYSE Rule 342 titled ''Annual fee,'' which is currently numbered 342.10, will instead be numbered 342.11 due to a numbering conflict with other sections of NYSE Rule 342.

x. Current NYSE Rule 342.11 (''Registered representative operating from residence'') has been deleted because other proposed amendments to NYSE Rule 342 make it redundant.

Furthermore, to clarify its response to comments made in Amendment No. 2, the Exchange reiterates its belief that its proposal would actually result in reduced overall industry costs by virtue of the fact that the exclusion of certain primary residences and several other types of locations currently required to register would cause a decline in the overall number of branches. In support of this statement, the Exchange, after reviewing its database of branch offices, estimates that the proposed definition would reduce the number of branch offices from approximately 16,000 to approximately 12,800, a reduction of approximately 20 percent.

In addition, the Exchange clarifies a footnote in Amendment No. 2 to more accurately express the Exchange's intended point that whereas the federal securities laws provide for sanctions on a firm and its supervisors for failing to supervise a person who is subject to their supervision and commits a violation of the federal securities laws, the SRO's supervision rules do not require a predicate violation to impose sanctions for failing to supervise.

In order to make use of a technique mandatory without requiring any particular technique that might not be appropriate for every member

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provide for sanctions on a firm and its supervisors for failing to supervise a person who is subject to their supervision and commits a violation of the federal securities laws, the SRO supervision rules do not require a predicate violation to impose sanctions for failing to supervise. *See* Amendment No. 3, *supra* note 10.

organization, the Exchange also amended the explanatory material in NYSE Rule 342.10 relating to written supervisory procedures of an associated person's primary residence, to clarify that the criteria for on-site for cause reviews of an associated person's primary residence would have to utilize risk-based sampling or other techniques designed to assure compliance with applicable securities laws and regulations and with NYSE rules. Furthermore, the Exchange notes that it has added factors (*e.g.*, the firm's size, the firm's organizational structure, the number and location of offices, and the number of associated persons assigned to a location) to be considered when member firms develop risk-based sampling techniques to determine the appropriateness of on-site for cause review of residences and other remote locations. The Exchange believes that these additional factors will better enable member firms to make such determinations.

Finally, the Exchange emphasizes that a registered representative in a branch office classified as a ''small office'' pursuant to Interpretations /01 and /02 of NYSE Rule 342.15 may not be the supervisor of that or any other office or non-branch location unless he or she is Series 9/10 qualified, regardless of that person's designation as the registered representative ''in charge'' of the office.

In proposing a uniform definition with exclusions, the Exchange recognizes that, in an evolving business and regulatory environment, it cannot capture every conceivable business arrangement/structure its members or member organizations seek to utilize. Accordingly, the Exchange will review, on a case-by-case basis, instances where a firm's proposal does not fall squarely within the rule and/or its exclusions.

With respect to the timing of the adoption of the Exchange's proposed definition of branch office, the Exchange states that the proposed new definition of branch office is ''the product of a coordinated effort among regulators to reduce inconsistencies in the definitions used by the Commission, NASD, the NYSE, and state securities regulators in identifying locations where broker/dealers conduct securities or investment banking business.'' [34] The proposed new definition is intended ''to facilitate the creation of a branch office registration system through the Central Registration Depository (''CRD'') to provide a more efficient, centralized method'' for members and member organizations ''to register branch office locations as required by the rules and regulations of states and self-regulatory organizations.'' [35] It is expected that both the Exchange and the NASD will revise their forms to incorporate the respective new definitions of branch office, and that the new forms will become operational on CRD during the fourth quarter of 2005.[36]

The Exchange believes that implementing its new definition of branch office prior to revising the CRD and the related forms will make the transition to the new branch office registration system and forms smoother, since its members' and member organizations' familiarity with the new definition will allow them to concentrate on the subsequent technical changes in the branch registration process. The Exchange does not believe that changing its definition of branch office prior to the aforementioned CRD changes will create confusion or in any way undermine the coordinated transition to the new branch office registration system.

III. Summary of Comments and NYSE's Response

As noted above, the Commission received five comment letters with respect to the Notice,[37] and seven comment letters with respect to a similar filing by the NASD [38] that specifically addressed the NYSE's proposed rule change.[39] The NYSE filed a response letter to address concerns raised by the commenters.[40]

Comment Letters

The commenters generally applauded the NYSE, the NASD, and NASAA for their efforts in creating a uniform definition of branch office, reducing the regulatory burdens currently imposed upon firms, and accounting for advances in technology and changes in the structure of broker-dealer firms and in the lifestyle and work habits of associated persons of broker-dealers.[41] One commenter noted that this attempt at uniformity would only be successful if all exchanges, regulatory agencies, and states adopt consistent definitions and uniformly interpret those definitions.[42]

However, the commenters believed that the proposed amendments to the definition of branch office would substantially increase the number of offices that must be inspected and that NYSE member firms would have to annually inspect every office, including homes, vacation homes or convenience offices, meeting the definition of a ''branch office.'' [43] Similarly, another commenter believed that imposition of the new definition of branch office would result in firms needlessly having to closely monitor where work was being performed and for how long, and that the logistical difficulties created by the NYSE proposal would encourage some firms to prohibit people from working outside the office.[44] Furthermore, the likelihood that firms would choose not to track but rather to register everybody or preclude activity outside the branch office would be increased by the serious consequences for an inadvertent failure to register.[45]

A few commenters also believed that, if the proposed NYSE definition is adopted, the number of registered branch offices would increase dramatically and result in substantial increased costs for large and small firms.[46] One commenter observed that the substantial costs associated with this proposed definition would not be limited to branch office supervision, but that additional costs would include costs associated with tracking employees' activity to determine whether or not they fall within the 50- or 30-day exclusions and a substantial increase in registration costs and fees.[47] Accordingly, it would be possible that the registration, bonding, personnel, and supervisory costs associated with this proposed definition would outweigh any cost savings through central registration.[48]

Furthermore, the commenters generally believed that the proposal presents a huge burden for firms with far-reaching branch networks and were generally against the 50-day cap on working from home and the 30-day cap on working at other locations in order to qualify under the primary residence exception.[49] They believed that there

[34] *See* Amendment No. 3, *supra* note 10 (referencing SR–NASD–2003–104).

[35] *Id.*

[36] *See* Securities Exchange Act Release No. 51923 (June 24, 2005), 70 FR 38229 (July 1, 2005) (SR–NYSE–2005–13).

[37] *See supra* note 5.

[38] *See supra* note 6.

[39] *See supra* note 7.

[40] *See* Response to Comments, *supra* note 8.

[41] *See* A.G. Edwards Letter 2, ARM Letter, InterSecurities Letter, MetLife Letter 1, MetLife Letter 2, Princor Letter, SIA Letter 1, SIA Letter 2, TFA Letter, *supra* notes 5 and 7.

[42] *See* A.G. Edwards Letter 2, *supra* note 5.

[43] *See* A.G. Edwards Letter 1, A.G. Edwards Letter 2, SIA Letter 1, *supra* note 5.

[44] *See* SIA Letter 1, *supra* note 5.

[45] *Id.*

[46] *See* SIA Letter 1, MetLife Letter 1, *supra* note 5.

[47] *See* SIA Letter 1; *see also* MetLife Letter 1, *supra* note 5.

[48] *See* SIA Letter 1, *supra* note 5.

[49] *See* A.G. Edwards Letter 1, A.G. Edwards Letter 2, MetLife Letter 1, SIA Letter 1, *supra* note 5; *see also* ARM Letter, InterSecurities Letter, Investment Services Letter, MetLife Letter 2, Princor Letter, SIA Letter 2, and TFA Letter (supporting the NASD's

would be no customer protection or regulatory interest served by requiring annual inspections of a location merely based on the number of days someone works from a location, if the location is not ''held out'' to the public, if no customer funds or securities are maintained at the location, and if the location is not used to conduct functions that occur in an office of supervisory jurisdiction.[50] Specifically, according to some commenters, what matters should be the type of activities performed at the site, the records maintained, the number of registered representatives working there, the ability to conduct supervision, and how the location is held out to the public, and not on an arbitrary criteria such as the number of days spent at the location.[51] Similarly, some of the commenters believed that real investor protection comes from limiting the types of activities performed outside the branch office and providing appropriate supervision of all associated persons, regardless of where they are conducting their business. As long as these two criteria are satisfied, the 50-day cap on working from home and the 30-day cap on working at other locations is unnecessary, unduly cumbersome, and of little value.[52] Another commenter believed that the SROs should not require the registration of a representative's residence under most circumstances. This commenter believed that the primary effect of adding a requirement to register homes and other locations that are not held out to the public would be an increase in fees that firms must pay to their regulators.[53]

Moreover, one commenter believed that the definition of ''office'' in the SEC's Books and Records Rule, Rule 17a–3(h)(1),[54] is not identical to the definition contained in the Exchange's proposal. The commenter believed that, if the SEC definition is not interpreted so that any location that is excluded from the definition of ''branch office'' in this rule would also be excluded from the SEC definition, there would be significantly higher costs and additional regulatory burdens. Furthermore, an inconsistent interpretation of the definition under the Books and Records Rule could lead to a situation where a state could require that records be maintained or produced at a location that is not a ''branch office'' within the NYSE proposal.[55] Similarly, another commenter expressed concern that the mere act of registering a primary residence as a branch office could be misinterpreted as satisfying the ''holding out'' requirement in SEC Rule 17a–4(l) of the Act[56] and therefore lead to a situation where a state would require that records be maintained or produced at a location that would not otherwise be deemed a ''branch office'' under SEC rules. This commenter requested that the NYSE and/or the Commission clarify that this would not be the case.[57]

NYSE's Response to Comments

The Exchange agrees, in part, with some of the comments relating to the proposed branch office definition's exceptions and has, thus, excepted primary residences and other locations from the definition, if certain appropriate supervisory and business limitations safeguards are satisfied by the member or member organization. In justifying the Exchange's initial proposal to impose a 50-day limitation for the primary residence exception, the Exchange stated that, notwithstanding the need for flexibility, adequate supervision could be most effectively accomplished when associated persons are assigned to, and have some actual physical presence at, a supervised location. By limiting the number of full business days that associated persons could conduct business at non-branch locations, members and member organizations could better supervise such persons while still providing them the flexibility that their lifestyles require today. The Exchange believed that the proposed 50- and 30-day limitations in the proposed exceptions would provide further flexibility by excluding partial business days at a broker's designated branch office during the hours such office is normally open for business.[58]

However, as noted above, after analysis of and in response to the comments received, the Exchange has eliminated its 50-day limitation on the primary residence registration exception. In eliminating the 50-day limitation on primary residences, the Exchange acknowledges that technological advances in surveillance/monitoring capabilities should help address the concerns posed by associated persons working from home, combined with the rest of the limitations in the exemption. At the same time, the Exchange still proposes to impose appropriate regulatory/supervisory safeguards, such as on-site review of such residences and remote locations, to help ensure that members and member organizations properly supervise such locations.[59]

In response to the comments that the new definition would present logistical obstacles and result in substantial time and effort to track each associated person's whereabouts and to register those locations that satisfy the 30-day threshold, the Exchange notes that the 30-day business day exclusion was proposed to address changes in lifestyle and work habits for associated persons.[60] The Exchange indicates that flexible work schedules usually are prearranged and are something such persons and their firms should be aware of on a prospective basis. However, the Exchange recognizes that exigent circumstances could arise where such information would not be clearly foreseeable to such persons and their firms. Since the Exchange has no interest in inadvertent rule violations that arise as the result of unforeseen circumstances, the Exchange intends to provide flexibility through interpretative relief for such unforeseen circumstances. Once the thresholds have been met, the Exchange represents that members and member organizations would be given a 30-day window to submit applications for registering such locations as branch offices. Pending branch office approval, associated persons could continue conducting business from such locations. If approved, the location would be a branch office. If not approved, the associated person would have to

decision to eliminate the fifty-day limitation for the primary residence exception), *supra* note 7.

[50] *See* A.G. Edwards Letter 1, A.G. Edwards Letter 2, ARM Letter, SIA Letter 1, *supra* notes 5 and 7.

[51] *See* ARM Letter, SIA Letter 1, SIA Letter 2, *supra* notes 5 and 7; *see also* A.G. Edwards Letter 2, *supra* note 5.

[52] *See* A.G. Edwards Letter 2, SIA Letter 1, *supra* note 5; *see also* MetLife Letter 2 (against the 50-day requirement in the primary residence exception as being burdensome, time-consuming and difficult to enforce), *supra* note 7.

[53] *See* MetLife Letter 1, *supra* note 5.

[54] 17 CFR 240.17a–3(h)(1).

[55] *See* A.G. Edwards Letter 2, *supra* note 5.

[56] 17 CFR 240.17a–4(l).

[57] *See* SIA Letter 1, *supra* note 5.

[58] *See* Response to Comments, *supra* note 8. Furthermore, if an associated person, *i.e.*, registered representative (''RR''), works primarily from his or her home, the Exchange believed that such location should be registered as a branch office subject to all attendant requirements including firm supervision and examination. Although an RR could not hold out his or her residence as a branch office, in reality customers would generally come to know that the RR is working from home. As a result, the Exchange believed that it would be likely that RRs would eventually meet with customers at their homes, or that customers would stop by to drop off checks or securities certificates. In addition, when an RR works primarily from home, he or she would keep records there and might not be diligent in ensuring that all required records are provided to the designated branch office. *Id.*

[59] *See* Amendment No. 2, *supra* note 9.

[60] These same concerns were raised with respect to the 50-day threshold; however, the NYSE has eliminated the 50-day threshold in response to the comments received.

immediately cease conducting business at the location.[61]

The Exchange would also address the industry's concerns regarding the perceived logistical problems associated with the Exchange's proposed definition by providing the same threshold flexibility in the registration/approval process of primary residences for locations that exceed the ''25 securities transaction'' exclusion permitted under proposed NYSE Rule 342.10(E). Furthermore, the Exchange will provide interpretative guidance as to what constitutes a ''securities transaction'' for purposes of this exclusion from the definition of branch office. For example, transactions effected pursuant to a dividend reinvestment plan, or similar types of transactions would be excluded in calculating the 25 securities transactions threshold. In aggregate, the Exchange believes that the registration/approval process and exclusions from the 25 securities transactions threshold should alleviate some of the industry's perceived concerns with regard to the proposed definition.[62]

Moreover, the Exchange believes that the commenters' concern that registering primary residences and other locations used for securities business would impose substantial costs overlooks current NYSE rules that require all offices, including residential offices, to be registered. In addition, each branch office location is currently required to be inspected on an annual basis. Accordingly, the Exchange believes that adoption of the proposed rule would reduce the number of locations that would be required to be registered by NYSE members and member organizations by eliminating locations such as exempt residences, locations engaged in customer service and back office operations, offices of convenience, and locations used primarily for non-securities activities.[63] In support of this statement, the Exchange, after reviewing its database of branch offices, estimates that the proposed definition would reduce the number of branch offices from approximately 16,000 to approximately 12,800, a reduction of approximately 20 percent.[64]

In summary, the Exchange represents that, in proposing its definition of ''branch office,'' among other things, it is the Exchange's intent to reduce regulatory burdens for the industry and to provide for a consistent approach among various securities regulators with respect to branch offices and other business locations.[65]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2 and 3, including whether Amendment Nos. 2 and 3 are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2002–34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2002–34. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2002–34 and should be submitted on or before October 7, 2005.

V. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b) of the Act.[66] Specifically, the Commission finds that approval of the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act[67] in that it is designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general, to protect investors and the public interest.

Given the continued advances in technology used to conduct and monitor businesses and changes in the structure of broker-dealers and in the lifestyles and work habits of the workforce, the Commission believes it is reasonable for the Exchange to reexamine whether all business locations need to be registered as branch offices of broker-dealer members and member organizations. The Commission also supports the Exchange, the NASD and state securities regulators' joint, regulatory effort to eliminate inconsistencies and duplication by developing a uniform definition of ''branch office.'' The Commission believes that such regulatory coordination and cooperation

[61] *See* Response to Comments, *supra* note 8.

[62] *Id.*

[63] *Id. See also*, Amendment No. 2, *supra* note 9. The proposal would actually result in reduced overall industry costs by virtue of the fact that the exclusion of certain primary residences and several other location types currently required to register would cause a decline in the overall number of branches. *Id.* Finally, the Exchange disagrees with the commenters' view that the 50-day limitation that was initially proposed raises potential inconsistencies with the SEC's books and records rule. On the contrary, the Exchange believes that its proposed definition is not inconsistent with the SEC's books and records requirement and, in fact, incorporates the substance of SEC Rule 17a–3(h)(1), 17 CFR 240.17a–3(h)(1). The Exchange believes that the act of registering a primary residence as a branch office would not, in and of itself, constitute ''holding out'' for purposes of the SEC's new record keeping requirements. In dealing with primary residences, the Exchange has imposed many of the conditions required under SEC Rule 17a–4(l), 17 CFR 240.17a–4(l). Where a primary residence exceeds the 50-day threshold and thus would be required to register as a branch office (as initially proposed), it would not necessarily be required to maintain records at that office. Rather records could be maintained at the designated branch office that is responsible for supervision of the home office, provided that the member or member organization adheres to the criteria of the rule. *See* Response to Comments, *supra* note 8.

[64] *See* Amendment No. 3, *supra* note 10.

[65] *See* Response to Comments, *supra* note 8.

[66] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[67] 15 U.S.C. 78f(b)(5).

will result in an effective and efficient regulation that will serve the entire broker-dealer community by recognizing the many different business models and streamlining the branch office registration process significantly. In addition, the Commission believes that the proposed definition strikes the right balance between providing flexibility to broker-dealer firms to accommodate the needs of their associated persons, while at the same time setting forth parameters that should ensure that all locations, including home offices, are appropriately supervised. In this regard, the Commission emphasizes the responsibility of firms to supervise their associated persons, regardless of their location and reminds all broker-dealers of their statutory duty to supervise.[68] The Commission also believes that the ability to identify the personnel located at each branch office is an important improvement to the CRD database and will provide regulators valuable information.

Furthermore, the Commission believes that the seven proposed exceptions to registering as a branch office constitute a reasonable approach to recognize current business, lifestyle, and surveillance practices and provide associated persons with flexibility with respect to where they perform their jobs. For instance, because associated persons may have to work from home due to illness, or to provide childcare or eldercare for certain family members, the Commission believes it is appropriate to except primary residences from the definition of branch office. In this regard, the Commission believes that the Exchange has also directly responded to negative comments on the 50-day cap on working from home and, accordingly, eliminated such limitation from its primary residence exception. This change made the proposed definition substantially similar to the definition proposed by the NASD. Moreover, the definition would also exempt from branch office registration any temporary location, other than the primary residence, provided it is used less than 30 business days in any calendar year.

The Commission finds it reasonable for the Exchange to not only propose conditions on the primary residence and temporary location exceptions (*e.g.*, the location can not be held out to the public as an office, neither customer funds nor securities can be handled there) but to also impose appropriate supervisory safeguards and limitations to help ensure that members and member organizations properly supervise and monitor such locations. For instance, the Exchange proposes to require that written supervisory procedures for such residences and other remote locations include criteria for on-site for cause reviews of an associated person's primary residence and that such reviews utilize risk-based sampling or other techniques designed to assure compliance with securities laws and regulations. The Exchange also included a list of factors which should be considered when developing risk-based sampling techniques for on-site reviews of such locations.[69] The Commission agrees with the Exchange that effective supervision can be achieved using advanced and sophisticated technology in the supervision and review of associated persons in such exempt locations. In this regard, the Commission expects the Exchange to review such written supervisory procedures and their implementation as part of its regular examination of members and member organizations.

In addition, under both exceptions noted above, the NYSE has provided additional flexibility by defining ''business day'' to exclude any partial day, provided the associated person spends at least four hours on such business day at his or her designated branch office during the hours such office is normally open for business. The Commission believes that this should prevent associated persons from regularly conducting business from other remote locations for the majority of a business day, without such activity being counted towards the 30-day limitation. The Commission expects the Exchange to monitor and ensure that, where the 30-business day (other location) exemption is utilized by associated persons, members and member organizations are maintaining records adequate to demonstrate compliance with the ''business day'' limitations.

Finally, the Commission believes it is reasonable for the Exchange to establish and implement its new definition of branch office before the changes to the CRD and the related forms are implemented. This should make the transition to the new branch office registration system and forms smoother by providing Exchange members and member organizations with sufficient time to become familiar with the new definition and to focus on the subsequent technical changes in the branch registration process. As the Exchange represents, changing the definition of branch office prior to the aforementioned CRD changes should not create confusion, or in any way undermine the coordinated transition to the new branch office registration system.

Accelerated Approval of Amendment Nos. 2 and 3

The Commission finds good cause for approving Amendment Nos. 2 and 3 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[70] Amendment No. 2 responded to comment letters by amending proposed NYSE Rule 342 to eliminate the 50-day limitation from its primary residence registration exception, adding a provision requiring written supervisory procedures of primary residences and other remote locations, and listing factors which should be considered in developing risk-based sampling techniques. The Commission finds that, given the objections raised with respect to the 50-day limitation and the potential logistical difficulties that could have resulted in complying with and enforcing the rule, it is appropriate and responsive for the Exchange to eliminate this condition from its proposed exception. Also, elimination of the 50-day limitation renders the NYSE's proposal virtually identical to the NASD's proposal, serving the industry's desire for uniformity. Furthermore, the Commission believes that requiring written supervisory procedures for primary residences and other remote locations and providing a list of factors

[68] *See* Section 15(b)(4)(E) of the Act, 15 U.S.C. 78*o*(b)(4)(E).

[69] The Commission notes that the factors proposed in NYSE Rule 342, which should be considered when developing risk-based sampling techniques to determine the appropriateness of on-site for cause reviews of primary residences and other remote locations, are substantially similar to the factors proposed by the NASD in SR–NASD–2003–104. *See* SR–NASD–2003–104, *supra* note 6. However, while the NASD's list of factors would broadly apply to the internal inspections and review of their members' businesses, including offices of supervisory jurisdiction (''OSJs''), branch offices, and non-branch offices, the NYSE's proposed list of factors would apply only to primary residences and other remote locations. However, the Commission notes that the NYSE provides for branch office inspections in NYSE Rule 342/03 of the NYSE Interpretation Handbook (''Handbook''). Under NYSE Rule 342/03 of the Handbook, an annual branch office inspection program must include, but is not limited to, testing and independent verification of internal controls related to the following areas: Safeguarding of customer funds and securities; maintaining books and records; supervision of customer accounts serviced by branch office managers; transmittal of funds between customers and registered representatives and between customers and third parties; validation of customer address changes, and validation of changes in customer account information.

[70] 15 U.S.C. 78s(b)(2).

which should be included in the development of the risk-based sampling techniques in the proposed rule text will clarify members' and member organizations' obligations in monitoring the use of these exceptions, as well as provide for effective supervision and review of associated persons in such exempt locations.

Amendment No. 3 provides a more comprehensive list of factors to be considered in the development of the risk-based sampling techniques, makes technical and clarifying changes to the rule text, and provides a discussion on the timing of the adoption of the Exchange's new definition of branch office. The Commission believes that the proposed changes in Amendment No. 3 provide for a clearer understanding of the implementation of the proposed branch office definition. Specifically, the Commission agrees with the Exchange that branch office registration should be primarily determined by the functions performed in an office. For instance, the Exchange's proposed deletion of the qualifier ''other than the main office'' from the definition of branch office recognizes that the definition of branch office and its corresponding registration should be triggered based on the activities performed at the location, even if the activities are performed at the main office. Similarly, the Exchange also proposes that, despite the seven exceptions to the definition of branch office, any location responsible for supervising the activities of persons associated with a member or member organization at one or more non-branch locations of such member or member organization should nevertheless register as a branch office. The Commission notes that this rule change is similar to one proposed by the NASD in its branch office filing. Finally, the Commission notes that the additional technical and clarifying changes made to NYSE Rule 342.10 raise no new issues of regulatory concern.

Accordingly, the Commission believes that accelerated approval of Amendment Nos. 2 and 3 is appropriate.

VI. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.[71]

[71] XXX

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[72] that the proposed rule change (SR–NYSE–2002–34) and Amendment No. 1 thereto are approved, and that Amendment Nos. 2 and 3 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[73]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5033 Filed 9–15–05; 8:45 am]

BILLING CODE 8010–01–P

[72] 15 U.S.C. 78s(b)(2).

[73] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10180 and # 10181]

Alabama Disaster Number AL–00003

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1605–DR), dated 08/29/2005.

Incident: Hurricane Katrina.

Incident Period: 08/29/2005 and continuing.

Effective Date: 09/08/2005.

Physical Loan Application Deadline Date: 10/28/2005.

EIDL Loan Application Deadline Date: 05/29/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 3, 14925 Kingsport Road Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Alabama, dated 08/29/2005, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:

Choctaw, Clarke, Greene, Hale, Pickens, Sumter, Tuscaloosa.

Contiguous Counties:

Alabama, Bibb, Fayette, Jefferson, Lamar, Marengo, Perry, Walker, Wilcox.

Mississippi, Clarke, Kemper, Lauderdale, Lowndes, Noxubee.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 05–18436 Filed 9–15–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10137 and # 10138]

Florida Disaster Number FL–00005

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Florida (FEMA–1595–DR), dated 07/10/2005.

Incident: Hurricane Dennis.

Incident Period: 07/07/2005 and continuing through 07/20/2005.

Effective Date: 08/31/2005.

Physical Loan Application Deadline Date: 09/08/2005.

EIDL Loan Application Deadline Date: 04/10/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 3, 14925 Kingsport Road Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Florida, dated 07/10/2005, is hereby amended to re-establish the incident period for this disaster as beginning 07/07/2005 and continuing through 07/20/2005.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 05–18437 Filed 9–15–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10193 and # 10194]

Georgia Disaster # GA–00004

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster

for the State of Georgia dated 09/07/2005.

Incident: Severe Storms and Tornadoes.

Incident Period: 08/29/2005.

Effective Date: 09/07/2005.

Physical Loan Application Deadline Date: 11/07/2005.

EIDL Loan Application Deadline Date: 06/07/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 3, 14925 Kingsport Road Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Carroll, Peach.

Contiguous Counties:

Alabama, Cleburne,Randolph.

Georgia, Bibb, Coweta, Crawford, Douglas, Fulton, Haralson, Heard, Houston, Macon, Paulding, Taylor.

The Interest Rates are:

	Percent
Homeowners with credit available elsewhere	5.375
Homeowners without credit available elsewhere	2.687
Businesses with credit available elsewhere	6.557
Businesses & small agricultural cooperatives without credit available elsewhere	4.000
Other (including non-profit organizations) with credit available elsewhere	4.750
Businesses and non-profit organizations without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 10193 C and for economic injury is 10194 0.

The States which received an EIDL Declaration # are Georgia, Alabama.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

Dated: September 7, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. 05–18438 Filed 9–15–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration No. 10191 and No. 10192]

Kentucky Disaster No. KY–00002

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Kentucky dated 09/07/2005.

Incident: Severe Storms and Flooding.

Incident Period: 08/29/2005.

Effective Date: 09/07/2005.

Physical Loan Application Deadline Date: 11/07/2005.

EIDL Loan Application Deadline Date: 06/07/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 3, 14925 Kingsport Road Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Christian.

Contiguous Counties:

Kentucky: Caldwell, Hopkins, Muhlenberg, Todd, and Trigg.

Tennessee: Montgomery, Stewart.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.687
Businesses With Credit Available Elsewhere	6.557
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.750
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10191 6 and for economic injury is 10192 0.

The States which received an EIDL Declaration number are: Kentucky, Tennessee.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: September 7, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. 05–18435 Filed 9–15–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of PM Air, LLC For Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order To Show Cause (Order 2005–9–12); Docket OST–2005–20363.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding PM Air, LLC fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail operating no more than two aircraft in scheduled service under Part 135 of the Federal Aviation Regulations.

DATES: Persons wishing to file objections should do so no later than September 26, 2005.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–2005–20363 and addressed to U.S. Department of Transportation, Docket Operations, (M–30, Room PL–401), 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. Damon D. Walker, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–7785.

Dated: Monday, September 12, 2005.

Karan K. Bhatia,

Assistant Secretary for Aviation and International Affair.

[FR Doc. 05–18411 Filed 9–15–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Submission Deadline for International Slots for the Summer 2006 Scheduling Season

AGENCY: Department of Transportation, FAA.

ACTION: Notice of submission deadline.

SUMMARY: On October 1, 1999, the FAA amended the regulations governing takeoff and landing slots and slot allocation procedures at certain High Density Traffic Airports as a result of the ''Open Transborder'' Agreement between the Government of the United States and the Government of Canada. One element of this final rule established that the deadline for submission of requests for international slots will be published in a Federal Register notice for each scheduling season. The purpose of the amendment is for the FAA deadline for international slots requests to coincide with the International Air Transport Association deadline for submission of international requests.

In accordance with this amendment, the FAA announces in this notice that the deadline for submitting requests for international slots at John F. Kennedy International Airport (JFK) for allocation under 14 CFR 93.217 is October 13, 2005.

Additionally,the FAA has designated Chicago's O'Hare International Airport (O'Hare) as a Level 2, Schedules Facilitated Airport under the IATA Guidelines. As such, the FAA requests carriers intending to conduct international service to O'Hare submit their intended schedules following the same procedures used for submitting requests for slots at JFK.

DATES: Requests for international slots must be submitted no later than October 13, 2005.

ADDRESSES: Requests may be submitted by mail to Slot Administration Office, AGC–220 Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; facsimile: (202) 267–7277; ARINC: DCAYAXD; e-mail address: *7–AWA–slotadmin@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Lorelei Peter, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number: (202) 267–3073.

Dated: Issued in Washington, DC on September 12, 2005.

James W. Whitlow,

Deputy Chief Counsel.

[FR Doc. 05–18480 Filed 9–15–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–22056]

Public Meeting To Discuss the Implementation of the North American Standard for Cargo Securement; Correction

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of public meeting; correction.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) published in the **Federal Register** on August 31, 2005 (70 FR 51857) a notice of a public meeting concerning the implementation of the North American Standard for Protection Against Shifting or Falling Cargo. The meeting was scheduled to be held on September 29–30, 2005 at the Beau Rivage Resort in Biloxi, Mississippi. However, due to the devastation caused by Hurricane Katrina, the location of this meeting has been moved from Biloxi, Mississippi, to the Hyatt Regency Indianapolis which is located at One South Capitol Avenue, Indianapolis IN 46204. Reservations can be made by contacting the Hyatt Regency Indianapolis by phone (317) 632–1234 or by fax (317) 616–6299.

DATES: The meeting will be held on September 29–30, 2005. The meeting will begin at 1 p.m. and end at 5 p.m. on September 29, 2005 and continue from 9 a.m. until 5 p.m. on September 30, 2005.

ADDRESSES: The meeting will be held at the Hyatt Regency Indianapolis, One South Capitol Avenue, Indianapolis, IN 46204.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Director of the Office of Bus and Truck Standards and Operations (MC–PS), (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

Issued on: September 12, 2005.

Warren Hoemann,

Deputy Administrator.

[FR Doc. 05–18479 Filed 9–15–05; 8:45 am]

BILLING CODE 4910–EX–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements (ICRs) for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than November 15, 2005.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Mr. Victor Angelo, Office of Support Systems, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0505, or OMB control number 2130–0548, or OMB control number 2130–0556.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or e-mail to Mr. Brogan at *robert.brogan@fra.dot.gov,* or to Mr. Victor Angelo at *victor.angelo@fra.dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Victor Angelo, Office of Support Systems, RAD–20, Federal Railroad Administration, 1120 Vermont Ave.,

NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6470). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved ICRs that FRA will submit for clearance by OMB as required under the PRA:

Title: Inspection and Maintenance Standards for Steam Locomotives.

OMB Control Number: 2130–0505.

Abstract: The Locomotive Boiler Inspection Act (LBIA) of 1911 required each railroad subject to the Act to file copies of its rules and instructions for the inspection of locomotives. The original LBIA was expanded to cover the entire steam locomotive and tender and all its parts and appurtenances. This Act then requires carriers to make inspections and to repair defects to ensure the safe operation of steam locomotives. The collection of information is used by tourist or historic railroads and by locomotive owners/operators to provide a record for each day a steam locomotive is placed in service, as well as a record that the required steam locomotive inspections are completed. The collection of information is also used by FRA Federal inspectors to verify that necessary safety inspections and tests have been completed and to ensure that steam locomotives are indeed ''safe and suitable'' for service and are properly operated and maintained.

Affected Public: Businesses.

Respondent Universe: 82 owners/operators.

Frequency of Submission: On occasion; annually.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
230.6—Waivers	82 owners	2 waiver letters	1 hour	2	68
230.12—Conditions for movement—Non-Complying Locomotives.	82 owners/operators	10 tags	6 minutes	1	30
230.14—31 Service Day Inspection	82 owners/operators	100 reports	20 minutes	33	990
—Notifications	82 owners/operators	2 notifications	5 minutes	.17	6
230.15—92 Service Day Inspection	82 owners/operators	100 reports	20 minutes	33	990
230.16—Annual Inspection	82 owners/operators	100 reports	30 minutes	50	1,500
—Notifications	82 owners/operators	100 notifications	5 minutes	8	272
230.17—1,472 Service Day Inspection	82 owners/operators	10 forms	30 minutes	5	150
230.20—Alteration Reports for Steam Locomotive Boilers.	82 owners/operators	5 reports	1	5	150
230.21—Steam Locomotive Number Change.	82 owners/operators	1 document	2 minutes	.033	1
230.33—Welded Repairs/Alterations	82 owners/operators	5 letters	10 minutes	1	34
—Written Request to FRA for Approval—. Unstayed Surfaces	82 owners/operators	5 letters	10 minutes	1	34
230.34—Riveted Repairs/Alterations	82 owners/operators	10 requests	5 minutes	1	34
230.49—Setting of Safety Relief Valves	82 owners/operators	38 tags	2 minutes	1.25	38
230.96—Main, Side, and Valve Motion Rods.	82 owners/operators	1 letter	10 minutes	.17	5
Recordkeeping Requirements					
230.13—Daily Inspection Reports	82 owners/operators	3,650 reports	2 minutes	122	3,660
230.17—1,472 Service Day Inspection	82 owners/operators	10 reports	15 minutes	3	90
230.18—Service Day Report	82 owners/operators	150 reports	15 minutes	38	1,140
230.19—Posting of Copy	82 owners/operators	300 forms	1 minute	5	15
230.41—Flexible Stay Bolts with Caps	82 owners/operators	10 entries	1 minute	.17	5
230.46—Badge Plates	82 owners/operators	3 reports	30 minutes	2	60
230.47—Boiler Number	82 owners/operators	1 report	15 minutes	.25	8
230.75—Stenciling Dates of Tests and Cleaning.	82 owners/operators	50 tests	15 minute	1	30
230.98—Driving, Trailing, and Engine Truck Axles—Journal Diameter Stamped.	82 owners/operators	1 stamp	15 minutes	.25	8

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
230.116—Oil Tanks	82 owners/operators	10 signs	1 minute	.17	5

Total Responses: 4,674.

Estimated Total Annual Burden: 314 .

Status: Extension of a Currently Approved Collection.

Title: Railroad Rehabilitation and Improvement Financing Program.

OMB Control Number: 2130–0548.

Abstract: Prior to the enactment of the Transportation Equity Act for the 21st Century (''TEA 21''), Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (the ''Act''), 45 U.S.C. 821 *et seq.*, authorized FRA to provide railroad financial assistance through the purchase of preference shares (45 U.S.C. 825), and the issuance of loan guarantees (45 U.S.C. 831). The FRA regulations implementing the preference share program were eliminated on February 9, 1996, due to the fact that the authorization for the program expired (28 FR 4937). The FRA regulations implementing the loan guarantee provisions of Title V of the Act are contained in 49 CFR part 260. Section 7203 of TEA 21, Public Law 105–178 (June 9, 1998), replaces the existing Title V financing programs. The collection of information is used by FRA staff to determine the financial eligibility of applicants for a loan or loan guarantee regarding eligible projects for the improvement/rehabilitation of rail equipment or facilities, the refinancing of outstanding debt for these purposes, or the development of new intermodal or railroad facilities. The aggregate unpaid principal amounts of obligations can not exceed $3.5 billion at any one time and not less than $1 billion is to be available solely for projects benefitting freight railroads other than Class I carriers.

Affected Public: State and local governments, governments sponsored authorities and corporations, railroads (including Amtrak), and joint ventures that include at least one railroad.

Respondent Universe: 21,956 potential applicants.

Frequency of Submission: Annual.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average (hours) time per response	Total annual burden hours	Total annual burden cost
260.23—Form and content of application generally.	21,956 potential applicants.	20 applications	20	400	$16,036
260.25—Additional information for applicants without credit ratings.	555 applicants	18 financial document pkgs.	40	720	27,936
260.31—Execution and filing of application:					
—Certificate of President	21,956 pot. applicants.	20 certificates	.6	12	526
—Certificate of Chief Financial Officer	21,956 pot. applicants.	20 certificates	.6	12	519
—Transmittal letter	21,956 pot. applicants.	20 letters	.6	12	519
—Copy/mail app. pkg.	21,956 pot. applicants.	20 app. pkgs	1.5	30	912
260.33—Information Request	21,956 pot. applicants.	20 statements	1	20	851
260.35—Environmental Assessment	21,956 pot. applicants.	1 envir. Doc	4,475	4,475	537,000
260.43—Inspection and Reporting	21,956 pot. applicants.	20 Docs	10	200	8,510

Total Responses: 159.

Estimated Total Annual Burden: 5,881 hours.

Status: Extension of a Currently Approved Collection.

Title: U.S. Locational Requirement for Dispatching U.S. Rail Operations.

OMB Control Number: 2130–0556.

Abstract: Part 241 requires, in the absence of a waiver, that all dispatching of railroad operations that occurs in the United States be performed in this country, with a minor exception. A railroad is allowed to conduct extraterritorial dispatching from Mexico or Canada in emergency situations, but only for the duration of the emergency. A railroad relying on the exception must provide written notification of its action to the FRA Regional Administrator of each FRA region in which the railroad operation occurs; such notification is not required before addressing the emergency situation. The information collected under this rule will be used as part of FRA's oversight function to ensure that extraterritorial dispatchers comply with applicable safety regulations.

Affected Public: Railroads.

Respondent Universe: 4 Railroads.

Frequency of Submission: On Occasion.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
241.7—Waivers—(a) General	4 railroads	1 waiver petition	4 hours	4 hours	$1.57.
(b) Special Dispensation—Extraterritorial Dispatching.	4 railroads	4 waiver petitions	4 hours	16 hours	$628.
(c) Fringe Border Dispatching	4 railroads	2 waiver petitions	4 hours	8 hours	$314.

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
241.9—Prohibition against extraterritorial dispatching, exceptions—Notification.	4 railroads	1 notification	8 hours	8 hours	$314.
241.11—Prohibition against conducting a railroad operation dispatched by an extraterritorial dispatcher; exceptions.	4 railroads	Included under § 241.9.	Included under § 241.9.	Included under § 241.9.	Included under § 241.9.
241.13—Prohibitions against track owner's requiring or permitting use of its line for a railroad operation dispatched by an extraterritorial dispatcher; exceptions.	4 railroads	Included under § 241.9.	Included under § 241.9.	Included under § 241.9.	Included under § 241.9.
241.15—Penalties—False Reports/Records.	$628	None	N/A	N/A	N/A.

Total Responses: 8.

Estimated Total Annual Burden: 36 hours.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on September 13, 2005.

D.J. Stadtler,

Director, Office of Budget, Federal Railroad Administration.

[FR Doc. 05–18487 Filed 9–15–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Grand Canyon Railway

[Waiver Petition Docket Number FRA–2005–22129]

The Grand Canyon Railway (GCRX) seeks a waiver of compliance with the requirements of 49 CFR 221.14, [Rear End Marking Device], published July 10, 1986. The regulation require trains be equipped with at least one rear end marking device, which has been approved by FRA in accordance with the procedures included in Appendix A of the regulation. GCRX seeks to use a ''Adlake No. 270'' as the rear end marking device on their excursion passenger trains, citing that the historical value would add to the ambiance of their historic railroad.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2005–22129) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov*.

Issued in Washington, DC on September 12, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator, for Safety Standards and Program Development.

[FR Doc. 05–18485 Filed 9–15–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Long Island Rail Road

[Docket Number FRA–2005–21964]

The Long Island Rail Road (LIRR) seeks a waiver of compliance from certain provisions of the Railroad Operating Practices regulations, 49 CFR part 218, regarding blue signal protection of workers. Specifically, the LIRR requests relief from the requirements of 49 CFR 218.29 Alternate methods of protection, at its Diesel Service Facilities in Richmond Hills, NY, and Long Island City, NY.

According to LIRR, both facilities are stub-end yards jointly used by both transportation and mechanical forces. These yards function to service, inspect, maintain, and dispatch the diesel passenger fleet for the LIRR. Each facility has a speed limit of 5 mph, with fixed derails on each service track and

manually operated switches. Yard movement is controlled by a yardmaster. Due to the configuration and service demands, the yard cannot facilitate the placement of a derail at the 150-foot interval as prescribed in § 218.29. Additionally, LIRR believes that lining and locking the manual switches increases potential error of proper switch alignment, and is a safety concern for all employees working in the area. Therefore, LIRR requests that employees at these two facilities be allowed to place derails at a distance of 50-feet from the equipment. LIRR states that they will post signage to reinforce the 5 mph speed restriction, as well as paint physical clearance lines denoting the 50-foot distance.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2005–21964) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room Pl-401 (Plaza Level), 400 Seventh Street SW., Washington. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19377–78). The statement may also be found at *http://dms.dot.gov*.

Issued in Washington, DC on September 12, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–18482 Filed 9–15–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Strategic Transportation Services

[Docket Number FRA–2005–21961]

Strategic Transportation Services, on behalf of EXEL Switching Services, seeks a waiver of compliance with the Safety Glazing Standards 49 CFR 223.9(a), which requires Locomotives, including yard locomotives, built or rebuilt after June 30, 1980, must be equipped with certified glazing in all locomotive cab windows, and with the requirements of the Safety Appliance Standards 49 CFR 231.3(c)(1) & (c)(4), which requires Each locomotive used in switching service must have four (4) switching steps & Switching steps must be supported by a bracket at each end and fastened to the bracket by two bolts or rivets of at least one-half (½) inch diameter or by a weldment of at least twice the strength of a bolted attachment. Strategic Transportation Services requests the waiver for a ''Rail King'' mobile railcar mover that they intend to utilize to switch railcars inside the Exel facility, business park, in Houston, TX. The Rail King mobile railcar mover described in the waiver request is not equipped with FRA Type I & II certified glazing material and only has two switching steps that are attached to the vehicle by weldment.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2005–21961) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov*.

Issued in Washington, DC, on September 12, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–18484 Filed 9–15–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with the rule. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Railroad Company

Waiver Petition Docket Number FRA–2005–21013

The Union Railroad Company (URC), further herein identified as the railroad, seeks approval for a waiver of compliance with the requirements of Reflectorization of Rail Freight Rolling Stock contained in 49 CFR part 224. Specifically, URC seeks a waiver from the requirements of 49 CFR part 224 for 154 slab rack cars, 238 coke rack hopper cars and 283 gondola cars. The railroad asserts that these cars travel exclusively on their property at speeds of 20 mph or less and that there are only three public road crossings over which the cars traverse. The railroad has requested that it be exempt from applying the required retro-reflective material tape to the sides of these freight cars.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. Each comment shall set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested Party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2005–21013) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on September 12, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–18483 Filed 9–15–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 37]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of the Railroad Safety Advisory Committee (RSAC) meeting.

SUMMARY: FRA announces the next meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The RSAC meeting topics include a briefing on the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users; the National Rail Safety Action Plan; the new precess for rail safety oversight; Congressional reports; and the railroad industry's response to natural disasters. Status reports will be given on the Passenger Safety, Railroad Operating Rules, Roadway Worker, and other active working groups. The Committee will be asked to vote on the Passenger Safety Working Group (1) Emergency Preparedness recommendations for a proposed rescue window access time line, (2) Mechanical recommendations and (3) Crashworthiness recommendations for the notice of proposed rulemaking.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m., and conclude at 4 p.m., on Tuesday, October 11, 2005.

ADDRESSES: The meeting of the RSAC will be held at the Almas Temple Sphinx Grand Ballroom, 1315 K Street, NW., Washington, DC 20005, (202) 898–1688. The meeting is open to the public on a first-come, first-serve basis and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

FOR FURTHER INFORMATION CONTACT: Patricia Butera, RSAC Coordinator, FRA, 1120 Vermont Avenue, NW., Stop 25, Washington, DC 20590, (202) 493–6212 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the RSAC. The meeting is scheduled to begin at 9:30 a.m., and conclude at 4 p.m., on Tuessday, October 11, 2005. The meeting of the RSAC will be held at the Almas Temple Sphinx Grand Ballroom, 1315 K Street, NW., Washington, DC 20005, (202) 898–1688.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The Committee consists of 48 individual voting representatives and five associate representatives drawn from among 30 organizations representing various rail industry perspectives, two associate representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico, and other diverse groups. Staffs of the National Transportation Safety Board and the Federal Transit Administration also participate in an advisory capacity.

See the RSAC Web site for details on pending tasks at: *http://rsac.fra.dot.gov/.* Please refer to the notice published in the **Federal Register** on March 11, 1996, (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC on September 12, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–18486 Filed 9–15–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–980X]

Santa Clara Valley Transportation Authority—Abandonment Exemption—in Santa Clara and Alameda Counties, CA

On August 29, 2005, Santa Clara Valley Transportation Authority (SCVTA), a noncarrier, filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903. SCVTA seeks to abandon all common carrier obligations over a 1.19-mile line of railroad, extending from milepost 16.30 to milepost 17.49 in Santa Clara County, CA (Industrial line), and a 2.77-mile line of railroad, extending from milepost 2.61 near Paseo Padre Drive to milepost 5.38 near

Grimmer Boulevard in and near Fremont, Alameda County, CA (Milpitas line).[1] The lines traverse United States Zip Codes 94536, 94538, 94539, 95112, 95116 and 95122.

The lines do not contain federally granted rights-of-way. Any documentation in the possession of SCVTA will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by December 16, 2005.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after the service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,200 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than October 6, 2005. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–980X, and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and Charles A. Spitulnik, McLeod, Watkinson & Miller, One Massachusetts Avenue, NW., Suite 800, Washington, DC 20001. Replies to the petition are due on or before October 6, 2005.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 12, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–18570 Filed 9–15–05; 8:45 am]

BILLING CODE 4915–01–P

[1] SCVTA filed a Notice of Exemption to acquire a line of railroad (which encompasses the two lines at issue here) from Union Pacific Railroad Company (UP) in 2002. *See Santa Clara Valley Transportation Authority—Acquisition Exemption—Union Pacific Railroad Company*, STB Finance Docket No. 34292 (STB served Dec. 26, 2002). SCVTA filed a Motion to Dismiss and Vacate the Notice of Exemption on December 31, 2002, arguing that it acquired only the physical assets of the line, and not UP's common carrier obligation. SCVTA subsequently filed a Notice of Withdrawal of its Motion to Dismiss and Vacate the Notice of Exemption on April 22, 2003.

UP has discontinued its trackage rights and abandoned its freight easements over these lines pursuant to the following exemptions: (1) over the Industrial line, in *Union Pacific Railroad Company—Abandonment Exemption—in Santa Clara County, CA*, STB Docket No. AB–33 (Sub-No. 221X) (STB served Nov. 26, 2004); and (2) over the Milpitas line, in *Union Pacific Railroad Company—Abandonment Exemption—in Alameda County, CA*, STB Docket No. AB–33 (Sub-No. 211X) (STB served Nov. 12, 2003).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Mayer, Brown, Rowe & Maw on behalf of The Burlington Northern and Santa Fe Railway Company (BNSF) (WB461–12—9/9/2005) for permission to use certain data from the Board's Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565–1541.

Vernon A. Williams,

Secretary.

[FR Doc. 05–18414 Filed 9–15–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 32299 (Sub–No. 1)]

Norfolk Southern Railway Company—Consolidation of Operations—CSX Transportation, Inc. (Petition for Supplemental Order)

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision No. 2 in STB Finance Docket No. 32299 (Sub-No. 1); Notice of Filing of Petition for Supplemental Order; Issuance of Procedural Schedule.

SUMMARY: On August 17, 2005, CSX Transportation, Inc. (CSXT) and Norfolk Southern Railway Company (NSR) filed with the Surface Transportation Board (Board) a petition (the Joint Petition) for a supplemental order authorizing the modification of one aspect of a series of transactions that the Board's predecessor, the Interstate Commerce Commission (ICC), approved in 1993. The contemplated modification is to have CSXT, rather than NSR, perform switching services for both carriers in the Newberry, SC area.

DATES: The effective date of this decision is September 16, 2005. Any person who wishes to file comments respecting the petition must do so by October 6, 2005. Petitioners will have until October 21, 2005, to reply to those comments.

ADDRESSES: Any filing submitted in this proceeding must be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's Web site at *http://www.stb.dot.*gov at the ''E-FILING'' link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (and also an IBM-compatible floppy disk with any textual submission in any version of either Microsoft Word or WordPerfect) to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. Comments should also be served (one copy each) on: (1) John W. Humes, Jr., 4135 Lakeside Drive, Jacksonville, FL 32210 (CSXT's representative); and (2) Richard A. Allen, Zuckert, Scoutt &

Rasenberger, LLP, 888 Seventeenth Street, NW., Suite 700, Washington, DC 20006 (NSR's representative). Any reply should also be served (one copy each) on each commenting party. Comments and replies may be served by e-mail, but only if service by e-mail is acceptable to the recipient.

FOR FURTHER INFORMATION CONTACT: Melissa A. Ziembicki, 202–565–1604. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: On July 7, 1993, CSXT and NSR filed an application pursuant to 49 U.S.C. 11343 (now 49 U.S.C. 11323) *et seq.* and 49 CFR Part 1180 seeking ICC approval for a series of transactions that involved the consolidation of certain operations in South Carolina. The proposed consolidation consisted of a series of trackage rights agreements, joint use agreements, and operating agreements. Two of those agreements—a 1993 Newberry Operating Rights Agreement and a 1993 Newberry Switching Agreement—concerned operations in the Newberry area, where both railroads have lines and serve customers. Those two agreements provided that NSR would perform switching services for both railroads in the Newberry area, switching cars between interchange tracks in Newberry owned by CSXT and customers located on the lines of both railroads in Newberry and nearby Prosperity. The 1993 Newberry Switching Agreement detailed the terms of NSR's switching services, and the 1993 Newberry Operating Rights Agreement provided for a grant by CSXT to NSR of operating rights over certain CSXT lines in the Newberry area necessary to permit NSR to switch cars to/from CSXT customers in the area.

In *Norfolk Southern Railway Company—Consolidation of Operations—CSX Transportation, Inc.*, Finance Docket No. 32299 (ICC served Nov. 26, 1993) (*Coordination Decision*), the ICC approved the application. The ICC found the proposed consolidation to be a ''minor transaction,'' *see* 49 CFR 1180.2(c), and it found that the proposed consolidation would not result in a change in the competitive balance between CSXT and NSR in South Carolina.

Based on their experience under the agreements approved in 1993, petitioners have concluded that a minor modification to one aspect of the 1993 consolidation—the switching at Newberry—would improve the efficiency of operations and enhance rail service to their customers. Petitioners explain that, at Newberry, NSR now performs the local switching for both carriers with its own crews, even though the vast majority of the linehaul shipments are for the account of CSXT, and even though CSXT provides the locomotives and maintains most of the tracks used in the switching operations. Petitioners now believe that this arrangement is inefficient and that service to all customers at Newberry would be improved if CSXT, rather than NSR, were to provide all switching services to CSXT and NSR customers at Newberry and nearby Prosperity.

Petitioners indicate that they have now entered into two new agreements—a 2005 Newberry Operating Rights Agreement and a 2005 Newberry Switching Agreement—under which CSXT would provide the switching for both railroads in the Newberry area, NSR would grant CSXT the operating rights over NSR lines necessary to perform such switching to/from NSR customers, and NSR would cease using the operating rights over CSXT lines that it acquired in 1993 to perform the switching. Specifically: (1) NSR would cease operations over CSXT trackage between Milepost (MP) 33.1 and MP 47.5 in Newberry County, SC, which NSR now uses to perform switching services in the Newberry, SC, area for both itself and CSXT; and (2) CSXT would acquire rights over NSR tracks to operate (i) between NSR MP V 47.1 and NSR MP V 49.0 in Newberry County, SC, and (ii) between NSR MP V 42.0 and NSR MP V 36.0 in Prosperity, SC, for the sole purpose of performing switching operations for the customers of both carriers.

Because the proposed changes would constitute a modification of arrangements approved by the ICC in 1993, petitioners seek Board authorization via a supplemental order under 49 U.S.C. 11327.

Effects on Shippers. Petitioners contend that the contemplated changes would improve service to customers in the Newberry area and would have no adverse effect on competition between CSXT and NSR. Petitioners explain that CSXT and NSR would continue to have the same commercial access to existing customers in the Newberry area and to new facilities that may locate on their lines in the future. Petitioners add that NSR cars switched by CSXT to customers on NSR lines would continue to be in the account of NSR; that CSXT cars switched to customers on CSXT lines would continue to be in the account of CSXT; and that CSXT switching service would simply replace NSR switching service.

Effects on Employees. The ICC's approval of the 1993 consolidation was subject to the employee protective conditions described in *Mendocino Coast Ry., Inc.—Lease and Operate,* 354 I.C.C. 732 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980) (*Mendocino Coast*), as clarified in *Wilmington Term. RR, Inc.—Pur. & Lease—CSX Transp., Inc.,* 6 I.C.C.2d 799 (1990). *See Coordination Decision,* slip op. at 4.[1] Petitioners advise that the employee protective conditions imposed in 1993 would apply to any employees that may be adversely affected by the transaction approved in 1993 or by the modification proposed here. Petitioners contend that the modification proposed here should not have a significant adverse effect on employees of the carriers because, although the proposed modification would result in the abolishment of a three-man NSR switching assignment currently performing switching services in Newberry, it is anticipated that the employees currently assigned to that job would exercise seniority to other positions in their seniority district. Petitioners assert that the modification proposed here would have no adverse effect on CSXT employees.

Proposed Schedule. Petitioners have asked that the Board publish notice of the Joint Petition in the **Federal Register** within 30 days of the filing date (*i.e.*, by September 16, 2005). Petitioners have also asked that comments be due 20 days after publication (*i.e.*, on October 6, 2005), that replies to comments be due 35 days after publication (*i.e.*, on October 21, 2005), and that the Board serve a decision within 45 days of the filing of replies (*i.e.*, by December 5, 2005).

Procedural Schedule Adopted by the Board. The Board has arranged to publish this decision in the **Federal Register** on September 16, 2005, to provide notice to interested persons that petitioners seek the relief contemplated in the Joint Petition.

Petition Available To Interested Persons. Interested persons may view the Joint Petition on the Board's Web site at *http://www.stb.dot.gov,* at the ''E-LIBRARY/Filings'' link. The petition was filed on August 17, 2005, and may be viewed with the filings for that date.

Any person wishing to secure a paper copy of the petition may request a copy

[1] Petitioners claim that the ICC imposed the employee protective conditions described in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980). *See* Joint Petition at 7; *compare Coordination Decision,* slip op. at 3 n.3, 4.

in writing or by phone from petitioners' representatives (1) John W. Humes, Jr., 4135 Lakeside Drive, Jacksonville, FL 32210, telephone number 904–388–4883, and (2) Richard A. Allen, Zuckert, Scoutt & Rasenberger, LLP, 888 Seventeenth Street, NW., Suite 700, Washington, DC 20006, telephone number 202–298–8660.

Comments and Replies. Any person who wishes to file comments respecting the Joint Petition must file such comments by October 6, 2005. Petitioners will have until October 21, 2005, to reply to any comments filed by interested persons.

Decision By The Board. The Board will endeavor to issue its decision on the merits of the Joint Petition by December 5, 2005.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Comments of interested persons are due by October 6, 2005.

2. Petitioners' reply is due by October 21, 2005.

3. This decision is effective on September 16, 2005.

Decided: September 8, 2005.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. 05–18246 Filed 9–15–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34745]

Penn Eastern Rail Lines, Inc.—Operation Exemption—Expressway 95 Industrial Park

Penn Eastern Rail Lines, Inc. (Penn Eastern), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to operate as a rail common carrier, approximately 1.15 miles of track and right-of-way on easements in the Expressway 95 Industrial Park (the Park) in Bensalem, Bucks County, PA. The track known as the Bensalem Branch is located along the east side of Amtrak's Northeast Corridor (NEC) at ATK milepost 70.2, between Philadelphia, PA, and Trenton, NJ.[1]

Penn Eastern certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class I or Class II rail carrier, and that its annual revenues will not exceed $5 million. The transaction was expected to be consummated on August 26, 2005, the effective date of the exemption (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34745, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 9, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–18352 Filed 9–15–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Government Securities: Call for Large Position Reports

AGENCY: Office of the Under Secretary for Domestic Finance, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury (''Department'' or ''Treasury'') called for the submission of Large Position Reports by those entities whose reportable positions in the 4⅜% Treasury Notes of August 2012 equaled or exceeded $2 billion as of close of business September 12, 2005.

DATES: Large Position Reports must be received before noon Eastern Time on September 20, 2005.

ADDRESSES: The reports must be submitted to the Federal Reserve Bank of New York, Government Securities Dealer Statistical Unit, 4th Floor, 33 Liberty Street, New York, New York 10045; or faxed to 212–720–5030.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena, Executive Director; Lee Grandy, Associate Director; or Kevin Hawkins, Government Securities Specialist; Bureau of the Public Debt, Department of the Treasury, at 202–504–3632.

SUPPLEMENTARY INFORMATION: In a press release issued on September 14, 2005, and in this **Federal Register** notice, the Treasury called for Large Position Reports from entities whose reportable positions in the 4⅜% Treasury Notes of August 2012, Series D–2012, equaled or exceeded $2 billion as of the close of business Monday, September 12, 2005. This call for Large Position Reports is pursuant to the Department's large position reporting rules under the Government Securities Act regulations (17 CFR part 420). Entities whose reportable positions in this note equaled or exceeded the $2 billion threshold must report these positions to the Federal Reserve Bank of New York. Entities with positions in this note below $2 billion are not required to file reports. Large Position Reports must be received by the Government Securities Dealer Statistical Unit of the Federal Reserve Bank of New York before noon Eastern Time on Tuesday, September 20, 2005, and must include the required position and administrative information. The Reports may be faxed to (212) 720–5030 or delivered to the Bank at 33 Liberty Street, 4th floor.

The 4⅜% Treasury Notes of August 2012, Series D–2012, have a CUSIP number of 912828 AJ 9, a STRIPS principal component CUSIP number of 912820 HF 7, and a maturity date of August 15, 2012.

The press release and a copy of a sample Large Position Report, which appears in Appendix B of the rules at 17 CFR part 420, are available at the Bureau of the Public Debt's Internet site at *http://www.publicdebt.treas.gov.*

Questions about Treasury's large position reporting rules should be directed to Treasury's Government Securities Regulations Staff at Public Debt on (202) 504–3632. Questions regarding the method of submission of Large Position Reports should be directed to the Government Securities Dealer Statistical Unit of the Federal Reserve Bank of New York at (212) 720–7993.

The collection of large position information has been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB Control Number 1535–0089.

[1] Penn Eastern notes that Consolidated Rail Corporation (Conrail) formerly operated this track as exempt industrial trackage under 49 U.S.C. 10906 until the last customer ceased rail operations in 2002. Penn Eastern states that the track connects with portions of the NEC over which Conrail currently has operating rights. Penn Eastern also states that the line will initially serve three customers within the Park, but that it eventually expects to attract additional customers.

Dated: September 14, 2005.

Randal K. Quarles,

Under Secretary, Domestic Finance.

[FR Doc. 05–18564 Filed 9–14–05; 1:08 pm]

BILLING CODE 4810–39–P

Federal Register

Friday,

September 16, 2005

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61, 65, 121, and 135

Advanced Qualification Program; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, 65, 121, and 135

[Docket No. FAA–2005–20750; Amendment Nos. 61–112, 63–33, 65–46, 121–313, 135–99]

RIN 2120–AI59

Advanced Qualification Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action codifies the requirements of the Advanced Qualification Program (AQP). Currently, the AQP requirements are in a Special Federal Aviation Regulation that expires on October 2, 2005. The AQP will continue as an alternative regulatory program for airlines seeking more flexibility in training than the traditional training program allows. The intended effect of this rule is to codify the AQP as a permanent, alternative method of compliance with the FAA's training requirements for carriers.

DATES: This action is effective October 3, 2005.

FOR FURTHER INFORMATION CONTACT: Thomas M. Longridge, AFS–230, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, P.O. Box 20027, Dulles International Airport, Washington, DC 20041–2027; telephone (703) 661–0260; e-mail: *thomas.longridge@faa.gov.* For issues involving legal interpretation of the regulation, contact Joe Conte, AGC–200, Regulations Division, Office of the Chief Counsel, 800 Independence Ave., SW., 20591; telephone (202) 267–3073; e-mail: *joe.conte@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

Authority for This Rulemaking

The FAA's authority to issue rules about aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, General requirements. Under that section, the FAA is charged with promoting the safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security. This regulation is within the scope of that authority since it permanently codifies the current requirements and practices of a regulatory compliance option for the training and qualification of aircrew personnel, and represents the FAA's continuing efforts to promote aviation safety.

Background

This final rule codifies the requirements of the AQP that are in Special Federal Aviation Regulation (SFAR) No. 58, which expires on October 2, 2005. The AQP improves flight crewmember performance by providing alternative means of compliance with certain rules and promotes the innovative use of modern technology for flight crewmember training. The AQP will continue as an alternative to the traditional training program for airlines seeking more flexibility in training than the traditional program allows.

On March 30, 2005, the FAA published a notice of proposed rulemaking (NPRM), ''Advanced Qualification Program'' (70 FR 16370). In the NPRM, the FAA included a detailed history of the development of the AQP. We also discussed a recommendation from the National Transportation Safety Board and recommendations from a Joint Government-Industry Task Force on flight crew performance.

The FAA received five comments on the proposed rule. Industry commenters included the Air Line Pilots Association International (ALPA), Air Transport Association (ATA), Alteon Training LLC (Alteon), American Airlines (American), and the Regional Airline Association (RAA). The commenters supported the AQP and the FAA's proposal to relocate the regulations currently found in SFAR No. 58 to 14 CFR part 121, although they had specific suggestions to revise the proposed language.

General Discussion of Comments

RAA believed establishing and maintaining an AQP requires excessive time and resources. ALPA emphasized the need to maintain an approval process administered by a national regulatory office. ALPA also submitted seven general ''Statements of Position'' about the AQP and suggested that these comments be incorporated to ensure flight crewmembers receive equal or higher quality training than the training under 14 CFR part 121, subparts N and O. The substance of each statement of position is generally addressed through existing AQP advisory and guidance material, and will not be discussed further in this document. Likewise, the FAA has made minor editorial and clarifying changes to the rule language that will not be discussed further.

American suggested using more inclusive terms to make the rule applicable to dispatchers, flight attendants, and other operations personnel. American further asserted that Aircrew Program Designee (APD) qualifications are the FAA's responsibility, not the certificate holder's responsibility. The carrier believed that the discussion in the NPRM implies that the responsibility would be borne by the certificate holder rather than the FAA.

The FAA recognizes the AQP may not be appropriate for every certificate holder. The AQP is a voluntary program that entails a strong commitment from the air carrier to exceed minimum training standards in the greater interest of safety. The AQP was established to allow a greater degree of regulatory flexibility in the approval of innovative training programs. Based on a documented analysis of operational requirements, a certificate holder under AQP may propose to depart from

traditional practices with respect to what, how, when, and where training and testing is conducted. Detailed AQP documentation requirements, data collection, and analysis provide the FAA and the operator the tools necessary to monitor and administer adequately an AQP.

The FAA plans to maintain the current AQP approval process as indicated by § 121.909, Approval of Advanced Qualification Program. The process includes program review by both the National program office and the local FAA office responsible for approval of the certificate holder's operations specifications.

The FAA acknowledges that part of the responsibility for APD training resides with the FAA. However, the APD still must maintain all qualifications required of the duty position including crew or dispatch qualifications. The prohibition against using a person in operations under this part who has not accomplished the required training and evaluation also would extend to an APD.

The FAA has changed several sections to ensure the AQP is applicable to dispatchers, flight attendants, and other operations personnel. For example, the FAA replaced ''flight instructor'' with the more inclusive ''instructor'' where appropriate. In § 121.919, the FAA replaced ''airmen competence'' with ''crewmember or dispatcher competence.''

Confidential Information and Data Collection Requirements (§§ 121.905 and 121.917)

This rule provides a procedure for carriers using AQP to request confidential treatment of data, submitted in accordance with § 121.917(c), at the time the submission is made. While this mechanism does not create any new protections for the carriers, it reduces the risk of an inadvertent disclosure of confidential business information by the FAA by providing a procedure for claiming protection under an existing Freedom of Information Act exemption.

American stated that justification for confidential treatment of the data information required by proposed § 121.917(c) that is attached to each submission is redundant, and suggested justification be required only with the initial submission. RAA, ALPA, American, and ATA also commented about the data collection requirements. ALPA stated that while the intent of the proposal is to protect the confidentiality of the training organization by submitting confidential performance data, there is no assurance that performance data of an individual pilot is protected or confidential. ALPA does support the collection of the required de-identified data since the AQP analysis requires sensitive grading scales beyond the traditional pass-fail binary scale.

American recommended excluding instructors and evaluators for the data collection process and adding dispatchers.

The rule language provides the maximum protection for the submitted information and is not redundant. A request is required for each submission to protect against inadvertent disclosures. AQP data collection is required for all AQP curriculums as defined by each carrier's approved AQP data collection and analysis section of the certificate holder's Implementation & Operations Plan (I&O Plan). Data collection requirements for the AQP will vary with the curriculum, the type of curriculum activity (training, validation, or evaluation), the type of participant (crewmember, instructor, or evaluator), and the overall management objectives for use of the data. The FAA has established the minimal requirements for submitting de-identified data by curriculum.

The data requirements set forth in § 121.917(c), which must be submitted to the FAA for analysis and validation, is without names or other elements that would identify an individual or group of individuals. The information is analyzed to monitor the effectiveness of AQP training, not to monitor individual crewmember, dispatcher, or other operations personnel. Instructor/Evaluator specific data are limited to their grading decisions. The FAA data provisions do not require participants to identify Instructors/Evaluators when they are being evaluated as crewmembers, dispatchers, or other operations personnel. Dispatchers and other operations personnel will be added to the data collection requirements. We note, however, that AQP participants still must comply with the record keeping requirements set forth in § 121.925, discussed below.

Definitions (§ 121.907)

ALPA stated the wording in the definition of ''Line operational evaluation (LOE)'' leads the reader to believe the purpose of the LOE is to evaluate Crew Resource Management (CRM) and technical skills. ALPA was opposed to any evaluation that is not based on well-defined qualification standards of technical proficiency. ALPA is not opposed to qualification standards that specify CRM or Dispatcher Resource Management (DRM) tasks that are technical in nature and easily measured. ALPA also noted the difficulty of training instructors and evaluators to assess CRM performance on an objective scale in a consistent manner.

The intent of an LOE is to evaluate and verify that an individual's job knowledge, technical skills, and resource management skills are commensurate with AQP qualification standards. Training of resource management is mandatory. A means of evaluating the effectiveness of such training is also mandatory, but pass/fail standards for resource management competency are not required. Applicant-developed evaluation strategies must at least include provisions for assessing the extent to which poor resource management skills are a contributory factor in a failure to meet technical standards of operational performance in validations and evaluations.

Each AQP (including provisional AQP curriculums for training centers) must provide instructor and evaluator indoctrination, qualification, and continuing qualification curriculums. These requirements include a separate job task analysis, qualification standards, curriculum(s), and curriculum outlines focusing on the instructor/evaluator duty positions. The program must define the minimum requirements each category of instructor/evaluator will accomplish to stay current. All instructors and evaluators will receive instruction and evaluation in resource management objectives and training methods. Also, a standardization program is required to establish uniform grading criteria, address reliability between instructors/evaluators, and develop remediation procedures.

Qualification Curriculum (§ 121.913)

The AQP requires each participant to use an instruction system design methodology to develop every AQP curriculum. These methodologies require that users translate tasks into terminal proficiency objectives and subtasks into supporting proficiency objectives. The user then must measure student performance against proficiency objectives and qualification standards for all curriculums. American recommended replacing ''task'' with ''objective'' throughout the rule. American observed the AQP job task analysis includes tasks and subtasks, but training under AQP is based on terminal and supporting proficiency objectives. In the final rule where appropriate, we replaced ''flight task/task'' with ''proficiency objective.''

Continuing Qualification Curriculum (§ 121.915)

Each AQP participant is required to develop a continuing qualification curriculum to ensure that during each qualification cycle, each person qualified under an AQP, including instructors and evaluators, will receive a mix of training and evaluation on all events and subjects necessary to maintain proficiency. American recommends rewording § 121.915(a)(1), Evaluation Period, to remove ''ground and flight'' and adding ''or via a methodology approved by the FAA.'' American suggests that the new sentence read: ''Each person qualified under an AQP must receive training and an evaluation of proficiency during each evaluation period at a training facility or via a methodology approved by the FAA.'' American also contends that § 121.915(a)(1) requiring flight training may exclude dispatchers, and requiring that all ground training be conducted at a training facility excludes the use of distributed training methods.

American also believes the rule should state a line check must be completed during each evaluation period instead of specifying ''in the calendar month at the midpoint of the evaluation period.'' The carrier suggested scheduling a line check to occur in a specific month for each certificate holder's PIC is an onerous and unnecessary scheduling task for most carriers that goes beyond the annual line check requirements of § 121.440(a). American asserted the no-notice line check paragraph implies that these line checks should be complete surprises. It pointed out that, while carriers may not ''notify'' crewmembers before an impending line check, the checks are not surprises.

The FAA has changed § 121.915(a)(1) to read, in pertinent part, ''to receive ground and flight training (as appropriate) and an evaluation of proficiency during each evaluation period at a training facility.'' This is similar to the language that appeared in SFAR 58: ''To receive a training session and an evaluation of proficiency during each evaluation period at a training facility.'' The requirement does not preclude the use of distributed training as long as the distributed training methodology has been approved as part of the AQP curriculum. Section 121.915(a) refers to the continuing qualification cycle whereas § 121.915(a)(1) refers to the evaluation period. The initial approval for a continuing qualification cycle is no more than 24 months in duration, divided into two 12-month evaluation periods. All critical proficiency objectives are accomplished during each evaluation period. Critical tasks are proficiency objectives that are trained, validated, or evaluated more often during an AQP. Each evaluation period must include at least one training session, but may include more. Initially, training sessions cannot be more than 12 months (plus or minus one month) apart. Also a proficiency evaluation must be completed during each evaluation period. The strategies employed for training and the facilities used by participants are approved as part of the AQP.

The language regarding line checks is consistent with existing exemptions that have been granted to some AQP certificate holders to allow a longer period between line checks in exchange for such no-notice line checks. The no-notice feature of the random line check procedure provides evaluators with an increased opportunity to observe typical behavior, and the requirement for conducting such checks over all geographic routes better assures such information is representative of performance over the airline's entire operation.

Language in exemptions from the random line check requirement plainly says the FAA expects the line check to be no-notice. These exemptions state that ''FAA finds that this relief provides an equivalent level of safety by virtue of addressing the operational line performance of the entire crew, rather than only the pilot-in-command. The FAA further finds that conducting line checks on a no-notice, randomly administered basis should enhance their utility as an overall gauge of operational safety.''

The FAA recognizes the pilot-in-command (PIC) will review the flight paperwork and will have some very short-term prior knowledge of the line check (because of security concerns, weight and balance issues, and scheduling requirements). However, we expect that in the time prior to the PIC receiving the flight paperwork about the line check flight, the AQP participant will have maintained the random no-notice requirement.

Certification (§ 121.919)

The rule describes the means by which a person subject to an AQP is eligible to receive a commercial or airline transport pilot, flight engineer, or aircraft dispatcher certificate or appropriate rating based on the successful completion of AQP training. American observed that § 121.919(c) refers to LOE scenarios as an exclusive measure of competence. They noted an AQP for dispatchers would be required to incorporate an operational scenario, the scenario probably would not be termed an LOE. American recommended changing wording from ''knowledge and skills in scenarios (i.e., LOE)'' to ''knowledge and skills in operational scenarios (i.e., LOE for crewmembers).''

American also observed that § 121.919(e) lists the types of instructors and evaluators who can certify training of applicants and requires applicants to pass an LOE. They noted the list of instructors does not include dispatch instructor and the paragraph does not allow for other types of operational evaluations for dispatchers. They recommend changing the wording to read, ''* * * as witnessed by an instructor, check airman, or APD, as appropriate for the duty position, and has passed an operational evaluation (i.e., LOE for crewmembers).''

The concept and term LOE applies equally to all personnel covered under an AQP. Evaluation of proficiency is defined as an LOE or equivalent evaluation under an AQP acceptable to the FAA. We changed § 121.919 to be inclusive of other positions (including dispatchers).

Approval of Training, Qualification, or Evaluation by a Person Who Provided Training by Arrangement (§ 121.923)

The rule sets forth the conditions for a certificate holder under part 121 or part 135 to arrange for AQP training by a separate training provider. Alteon objected to provisional approval for AQP training providers and suggested that §§ 121.923(a) and (b) be rewritten. Alteon further stated the specific use of provisionally approved curriculums, curriculum segments, or portions of curriculum segments in a training provider's AQP should be approved by the FAA.

In § 121.923, provisional approval is meant to allow a training center to develop and market an AQP that could be tailored by contracting participants to meet their particular needs. The major difference between developing an AQP by a training center and by an air carrier is the training center can develop generic AQP documentation and individual curriculum segments. This documentation is given a provisional approval. A provisional AQP allows a training center to accomplish front-end AQP development and to offer its services as an approved AQP provider before establishing a contract or other arrangements with a specific certificate holder.

Recordkeeping Requirements (§ 121.925)

Like traditional training programs under part 121 and part 135, the AQP requires that each certificate holder conducting an approved AQP establish and maintain records in sufficient detail to demonstrate that the certificate holder is in compliance with all AQP requirements. ALPA believes AQP training and checking records maintained by a company should not contain more data that is accessible through the Pilot Records Improvement Act (PRIA) than it would under traditional programs. The regulatory language to that end should be identical.

The recordkeeping process in AQP does not differ from traditional recordkeeping requirements. The intent of § 121.925, Recordkeeping, is that AQP participants may maintain a record keeping system based on the standard 14 CFR part 121 or 135 (i.e., § 121.683), recordkeeping requirements. Section 121.925, Recordkeeping, is based on existing SFAR No. 58, section 12, with no substantive changes. Individual recordkeeping by certificate holders is needed to show whether each crewmember, aircraft dispatcher, or other operations personnel is in compliance with the AQP and subpart Y. Thus, for example, under an AQP, if a pilot is identified for augmented training, the satisfactory or unsatisfactory completion of that training and the date must be recorded and maintained in the carrier's training records for that pilot. The recordkeeping requirement of § 121.925 is a separate function from the data collected and analyzed under the requirements of § 121.917(c).

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Paperwork Reduction Act

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor collecting information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number.

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted the information requirements associated with this final rule to the Office of Management and Budget for its review. The OMB control number assigned to this collection of information is 2120–0701.

Summary: AQP is an existing rule and the data required by that rule is currently being submitted to the Agency. Data collection and analysis of data is a fundamental part of AQP. AQP is continuously validated through collecting and analyzing trainee performance. Data collection and analysis processes ensure the certificate holder provides performance information on its crewmembers, instructors, and evaluators that will enable the certificate holder and the FAA to determine whether the form and content of training and evaluation activities are satisfactorily accomplishing the overall objectives of the curriculum.

Use of: The Voluntary Safety Programs Branch, AFS–230, receives the AQP data monthly to monitor program compliance, effectiveness, and efficiency. AFS–230 processes the information for errors and omissions then analyzes the data. The FAA principal operations inspector (POI) responsible for oversight of the certificate holder reviews the analyzed data. The POI and his staff make use of this information to monitor training trends, to identify areas in need of corrective action, to plan targeted surveillance of curriculums, and to verify that corrective action is effective. In general, this information is used to provide an improved basis for curriculum approval and monitoring, as well as agency decisions about air carrier training regulation and policy.

Respondents (including number of): The likely respondents to this proposed data collection requirement are 16 airlines and 2 manufacturers.

Frequency: The frequency of data collection is monthly.

Annual Burden Estimate: Affected firms already incur annual recordkeeping and reporting burden as follows:

- Number of respondents with approved AQPs: 18
- Frequency of response per respondent: Monthly.
- Estimated number of hours per respondent to prepare information to be submitted to the FAA: 2.0
- Estimated annual hour burden per respondent: 24
- Total estimated hours of industry burden: 432

The estimated 2-hour burden is the time required to transform the data already produced monthly by the certificate holder as part of an approved AQP into the appropriate form for use by the FAA.

Currently sixteen airlines and two manufacturers have voluntarily established AQP programs. However, not all the participants' aircraft fleet types (personnel) are covered by an AQP. Based on a cost-benefit study from certificate holders with existing AQP programs, the average cost of an AQP analyst is $60 per hour. Therefore, the cost of this burden is:

- Industry per annum (432 hours)—$25,920
- Each participant per annum (24 hours)—$1440

Regulatory Analyses

Final rules to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (RFA), codified at 5 U.S.C. 601–611, requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis for U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined the expected cost impact is so minimal that a proposal does not warrant a full evaluation, this order allows a statement to that effect, and the basis for it, to be included in the preamble. In this case, a full regulatory evaluation cost-benefit evaluation need not be prepared. Such a determination has been made for this rule.

This final rule will make permanent the AQP, an existing temporary

regulatory alternative for operators to comply with carrier training requirements. The AQP is not mandatory. It is left up to the discretion of the individual certificate holder as to whether to adopt the AQP or not. The FAA assumes that certificate holders will do so only if it improves their training effectiveness and safety or is otherwise in their economic interest. In the NPRM, the FAA stated that it expected the outcome will have a minimal impact, and a regulatory evaluation was not prepared. The FAA also solicited comments in that NPRM from the aviation community about the FAA determination of minimal impact. The FAA received no comments to this effect. Therefore, the FAA still expects that this rule will not impose any additional net cost burden on the industry.

Regulatory Flexibility Determination

The RFA establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Because the rule is voluntary and thus will not impose compliance costs, the FAA Administrator certifies the rule will not have a significant economic impact on a substantial number of small air carriers. We solicited comments and received none.

Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million instead of $100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action will not have a substantial direct effect on the States, or the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order, because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 61

Air safety, Air transportation, Aviation safety, Safety.

14 CFR Part 63

Air safety, Air transportation, Airmen, Aviation safety, Safety, Transportation.

14 CFR Part 65

Airmen, Aviation safety, Air transportation, Aircraft.

14 CFR Part 121

Aircraft pilots, Airmen, Aviation safety, Pilots, Safety.

14 CFR Part 135

Air carriers, Air transportation, Airmen, Aviation safety, Safety, Pilots.

The Amendment

■ The Federal Aviation Administration is amending parts 61, 63, 65, 121, and 135 of Title 14, Code of Federal Regulations (14 CFR parts 61, 63, 65, 121 and 135) as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

SFAR No. 58 [Removed]

■ 2. Remove SFAR No, 58 from part 61.

§ 61.58 [Amended]

■ 3. Amend § 61.58(b) by removing ''SFAR 58'' and adding ''subpart Y of part 121 of this chapter'' in its place.

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

■ 4. The authority citation for part 63 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40108, 40113, 44701–44703, 44710, 44712, 44714, 44716, 44717, 44722, 45303.

SFAR No. 58 [Removed]

■ 5. Remove SFAR No. 58 from part 63.

PART 63—[NOMENCLATURE CHANGE]

■ 6. Amend part 63 by removing ''SFAR 58'' and adding ''subpart Y of part 121 of this chapter'' in its place wherever it occurs in the part.

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

■ 7. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

SFAR No. 58 [Removed]

■ 8. Remove SFAR No. 58 from part 65.

PART 65—[NOMENCLATURE CHANGE]

■ 9. Amend part 65 by removing ''SFAR 58'' and adding ''subpart Y of part 121 of this chapter'' in its place wherever it occurs in the part.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 10. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, 46301.

SFAR No. 58 [Removed]

■ 11. Remove Special Federal Aviation Regulation (SFAR) No. 58.—Advanced Qualification Program from part 121.

■ 12. Add subpart Y to read as follows:

Subpart Y—Advanced Qualification Program

Sec.

Subpart Y—Avanced Qualification Program

§ 121.901 Purpose and eligibility.

(a) Contrary provisions of parts 61, 63, 65, 121, 135, and 142 of this chapter notwithstanding, this subpart provides for approval of an alternative method (known as ''Advanced Qualification Program'' or ''AQP'') for qualifying, training, certifying, and otherwise ensuring competency of crewmembers, aircraft dispatchers, other operations personnel, instructors, and evaluators who are required to be trained under parts 121 and 135 of this chapter.

(b) A certificate holder is eligible under this subpart if the certificate holder is required or elects to have an approved training program under §§ 121.401, 135.3(c), or 135.341 of this chapter.

(c) A certificate holder obtains approval of each proposed curriculum under this AQP as specified in § 121.909.

§ 121.903 General requirements for Advanced Qualification Programs.

(a) A curriculum approved under an AQP may include elements of existing training programs under part 121 and part 135 of this chapter. Each curriculum must specify the make, model, series or variant of aircraft and each crewmember position or other positions to be covered by that curriculum. Positions to be covered by the AQP must include all flight crewmember positions, flight instructors, and evaluators and may include other positions, such as flight attendants, aircraft dispatchers, and other operations personnel.

(b) Each certificate holder that obtains approval of an AQP under this subpart must comply with all the requirements of the AQP and this subpart instead of the corresponding provisions of parts 61, 63, 65, 121, or 135 of this chapter. However, each applicable requirement of parts 61, 63, 65, 121, or 135 of this chapter, including but not limited to practical test requirements, that is not specifically addressed in the AQP continues to apply to the certificate holder and to the individuals being trained and qualified by the certificate holder. No person may be trained under an AQP unless that AQP has been approved by the FAA and the person complies with all the requirements of the AQP and this subpart.

(c) No certificate holder that conducts its training program under this subpart may use any person nor may any person serve in any duty position as a required crewmember, an aircraft dispatcher, an instructor, or an evaluator, unless that person has satisfactorily accomplished, in a training program approved under this subpart for the certificate holder, the training and evaluation of proficiency required by the AQP for that type airplane and duty position.

(d) All documentation and data required under this subpart must be submitted in a form and manner acceptable to the FAA.

(e) Any training or evaluation required under an AQP that is satisfactorily completed in the calendar month before or the calendar month after the calendar month in which it is due is considered to have been completed in the calendar month it was due.

§ 121.905 Confidential commercial information.

(a) Each certificate holder that claims that AQP information or data it is submitting to the FAA is entitled to confidential treatment under 5 U.S.C. 552(b)(4) because it constitutes confidential commercial information as described in 5 U.S.C. 552(b)(4), and should be withheld from public disclosure, must include its request for confidentiality with each submission.

(b) When requesting confidentiality for submitted information or data, the certificate holder must:

(1) If the information or data is transmitted electronically, embed the claim of confidentiality within the electronic record so the portions claimed to be confidential are readily apparent when received and reviewed.

(2) If the information or data is submitted in paper format, place the word ''CONFIDENTIAL'' on the top of each page containing information or data claimed to be confidential.

(3) Justify the basis for a claim of confidentiality under 5 U.S.C. 552(b)(4).

§ 121.907 Definitions.

The following definitions apply to this subpart:

Crew Resource Management (CRM) means the effective use of all the resources available to crewmembers, including each other, to achieve a safe and efficient flight.

Curriculum outline means a listing of each segment, module, lesson, and lesson element in a curriculum, or an

equivalent listing acceptable to the FAA.

Evaluation of proficiency means a Line Operational Evaluation (LOE) or an equivalent evaluation under an AQP acceptable to the FAA.

Evaluator means a person who assesses or judges the performance of crewmembers, instructors, other evaluators, aircraft dispatchers, or other operations personnel.

First Look means the assessment of performance to determine proficiency on designated flight tasks before any briefing, training, or practice on those tasks is given in the training session for a continuing qualification curriculum. First Look is conducted during an AQP continuing qualification cycle to determine trends of degraded proficiency, if any, due in part to the length of the interval between training sessions.

Instructional systems development means a systematic methodology for developing or modifying qualification standards and associated curriculum content based on a documented analysis of the job tasks, skills, and knowledge required for job proficiency.

Job task listing means a listing of all tasks, subtasks, knowledge, and skills required for accomplishing the operational job.

Line Operational Evaluation (LOE) means a simulated line environment, the scenario content of which is designed to test integrating technical and CRM skills.

Line Operational Simulation (LOS) means a training or evaluation session, as applicable, that is conducted in a simulated line environment using equipment qualified and approved for its intended purpose in an AQP.

Planned hours means the estimated amount of time (as specified in a curriculum outline) that it takes a typical student to complete a segment of instruction (to include all instruction, demonstration, practice, and evaluation, as appropriate, to reach proficiency).

Qualification standard means a statement of a minimum required performance, applicable parameters, criteria, applicable flight conditions, evaluation strategy, evaluation media, and applicable document references.

Qualification standards document means a single document containing all the qualification standards for an AQP together with a prologue that provides a detailed description of all facets of the evaluation process.

Special tracking means assigning a person to an augmented schedule of training, checking, or both.

Training session means a contiguously scheduled period devoted to training activities at a facility approved by the FAA for that purpose.

Variant means a specifically configured aircraft for which the FAA has identified training and qualifications that are significantly different from those applicable to other aircraft of the same make, model, and series.

§ 121.909 Approval of Advanced Qualification Program.

(a) *Approval process.* Application for approval of an AQP curriculum under this subpart is made, through the FAA office responsible for approval of the certificate holder's operations specifications, to the Manager of the Advanced Qualification Program.

(b) *Approval criteria.* Each AQP must have separate curriculums for indoctrination, qualification, and continuing qualification (including upgrade, transition, and requalification), as specified in §§ 121.911, 121.913, and 121.915. All AQP curriculums must be based on an instructional systems development methodology. This methodology must incorporate a thorough analysis of the certificate holder's operations, aircraft, line environment and job functions. All AQP qualification and continuing qualification curriculums must integrate the training and evaluation of CRM and technical skills and knowledge. An application for approval of an AQP curriculum may be approved if the program meets the following requirements:

(1) The program must meet all the requirements of this subpart.

(2) Each indoctrination, qualification, and continuing qualification AQP, and derivatives must include the following documentation:

(i) Initial application for AQP.

(ii) Initial job task listing.

(iii) Instructional systems development methodology.

(iv) Qualification standards document.

(v) Curriculum outline.

(vi) Implementation and operations plan.

(3) Subject to approval by the FAA, certificate holders may elect, where appropriate, to consolidate information about multiple programs within any of the documents referenced in paragraph (b)(2) of this section.

(4) The Qualification Standards Document must indicate specifically the requirements of the parts 61, 63, 65, 121, or 135 of this chapter, as applicable, that would be replaced by an AQP curriculum. If a practical test requirement of parts 61, 63, 65, 121, or 135 of this chapter is replaced by an AQP curriculum, the certificate holder must establish an initial justification and a continuing process approved by the FAA to show how the AQP curriculum provides an equivalent level of safety for each requirement that is to be replaced.

(c) *Application and transition.* Each certificate holder that applies for one or more advanced qualification curriculums must include as part of its application a proposed transition plan (containing a calendar of events) for moving from its present approved training to the advanced qualification program training.

(d) *Advanced Qualification Program revisions or rescissions of approval.* If after a certificate holder begins training and qualification under an AQP, the FAA finds the certificate holder is not meeting the provisions of its approved AQP, the FAA may require the certificate holder, pursuant to § 121.405(e), to make revisions. Or if otherwise warranted, the FAA may withdraw AQP approval and require the certificate holder to submit and obtain approval for a plan (containing a schedule of events) that the certificate holder must comply with and use to transition to an approved training program under subpart N of this part or under subpart H of part 135 of this chapter, as appropriate. The certificate holder may also voluntarily submit and obtain approval for a plan (containing a schedule of events) to transition to an approved training program under subpart N of this part or under subpart H of part 135 of this chapter, as appropriate.

(e) *Approval by the FAA.* Final approval of an AQP by the FAA indicates the FAA has accepted the justification provided under paragraph (b)(4) of this section and the applicant's initial justification and continuing process establish an equivalent level of safety for each requirement of parts 61, 63, 65, 121, and 135 of this chapter that is being replaced.

§ 121.911 Indoctrination curriculum.

Each indoctrination curriculum must include the following:

(a) For newly hired persons being trained under an AQP: The certificate holder's policies and operating practices and general operational knowledge.

(b) For newly hired crewmembers and aircraft dispatchers: General aeronautical knowledge appropriate to the duty position.

(c) For instructors: The fundamental principles of the teaching and learning process; methods and theories of instruction; and the knowledge necessary to use aircraft, flight training

devices, flight simulators, and other training equipment in advanced qualification curriculums, as appropriate.

(d) For evaluators: General evaluation requirements of the AQP; methods of evaluating crewmembers and aircraft dispatchers and other operations personnel, as appropriate, and policies and practices used to conduct the kinds of evaluations particular to an AQP (*e.g.*, LOE).

§ 121.913 Qualification curriculum.

Each qualification curriculum must contain training, evaluation, and certification activities, as applicable for specific positions subject to the AQP, as follows:

(a) The certificate holder's planned hours of training, evaluation, and supervised operating experience.

(b) For crewmembers, aircraft dispatchers, and other operations personnel, the following:

(1) Training, evaluation, and certification activities that are aircraft- and equipment-specific to qualify a person for a particular duty position on, or duties related to the operation of, a specific make, model, series, or variant aircraft.

(2) A list of and text describing the knowledge requirements, subject materials, job skills, and qualification standards of each proficiency objective to be trained and evaluated.

(3) The requirements of the certificate holder's approved AQP program that are in addition to or in place of, the requirements of parts 61, 63, 65, 121 or 135 of this chapter, including any applicable practical test requirements.

(4) A list of and text describing operating experience, evaluation/remediation strategies, provisions for special tracking, and how recency of experience requirements will be accomplished.

(c) For flight crewmembers: Initial operating experience and line check.

(d) For instructors, the following as appropriate:

(1) Training and evaluation activities to qualify a person to conduct instruction on how to operate, or on how to ensure the safe operation of a particular make, model, and series aircraft (or variant).

(2) A list of and text describing the knowledge requirements, subject materials, job skills, and qualification standards of each procedure and proficiency objective to be trained and evaluated.

(3) A list of and text describing evaluation/remediation strategies, standardization policies and recency requirements.

(e) For evaluators: The requirements of paragraph (d)(1) of this section plus the following, as appropriate:

(1) Training and evaluation activities that are aircraft and equipment specific to qualify a person to assess the performance of persons who operate or who ensure the safe operation of, a particular make, model, and series aircraft (or variant).

(2) A list of and text describing the knowledge requirements, subject materials, job skills, and qualification standards of each procedure and proficiency objective to be trained and evaluated.

(3) A list of and text describing evaluation/remediation strategies, standardization policies and recency requirements.

§ 121.915 Continuing qualification curriculum.

Each continuing qualification curriculum must contain training and evaluation activities, as applicable for specific positions subject to the AQP, as follows:

(a) *Continuing qualification cycle.* A continuing qualification cycle that ensures that during each cycle each person qualified under an AQP, including instructors and evaluators, will receive a mix that will ensure training and evaluation on all events and subjects necessary to ensure that each person maintains proficiency in knowledge, technical skills, and cognitive skills required for initial qualification in accordance with the approved continuing qualification AQP, evaluation/remediation strategies, and provisions for special tracking. Each continuing qualification cycle must include at least the following:

(1) *Evaluation period.* Initially the continuing qualification cycle is comprised of two or more evaluation periods of equal duration. Each person qualified under an AQP must receive ground training and flight training, as appropriate, and an evaluation of proficiency during each evaluation period at a training facility. The number and frequency of training sessions must be approved by the FAA.

(2) *Training.* Continuing qualification must include training in all tasks, procedures and subjects required in accordance with the approved program documentation, as follows:

(i) For pilots in command, seconds in command, and flight engineers, First Look in accordance with the certificate holder's FAA-approved program documentation.

(ii) For pilots in command, seconds in command, flight engineers, flight attendants, instructors and evaluators: Ground training including a general review of knowledge and skills covered in qualification training, updated information on newly developed procedures, and safety information.

(iii) For crewmembers, instructors, evaluators, and other operational personnel who conduct their duties in flight: Proficiency training in an aircraft, flight training device, flight simulator, or other equipment, as appropriate, on normal, abnormal, and emergency flight procedures and maneuvers.

(iv) For dispatchers and other operational personnel who do not conduct their duties in flight: ground training including a general review of knowledge and skills covered in qualification training, updated information on newly developed procedures, safety related information, and, if applicable, a line observation program.

(v) For instructors and evaluators: Proficiency training in the type flight training device or the type flight simulator, as appropriate, regarding training equipment operation. For instructors and evaluators who are limited to conducting their duties in flight simulators or flight training devices: Training in operational flight procedures and maneuvers (normal, abnormal, and emergency).

(b) *Evaluation of performance.* Continuing qualification must include evaluation of performance on a sample of those events and major subjects identified as diagnostic of competence and approved for that purpose by the FAA. The following evaluation requirements apply:

(1) Evaluation of proficiency as follows:

(i) For pilots in command, seconds in command, and flight engineers: An evaluation of proficiency, portions of which may be conducted in an aircraft, flight simulator, or flight training device as approved in the certificate holder's curriculum that must be completed during each evaluation period.

(ii) For any other persons covered by an AQP, a means to evaluate their proficiency in the performance of their duties in their assigned tasks in an operational setting.

(2) Line checks as follows:

(i) Except as provided in paragraph (b)(2)(ii) of this section, for pilots in command: A line check conducted in an aircraft during actual flight operations under part 121 or part 135 of this chapter or during operationally (line) oriented flights, such as ferry flights or proving flights. A line check must be completed in the calendar month at the midpoint of the evaluation period.

(ii) With the FAA's approval, a no-notice line check strategy may be used in lieu of the line check required by paragraph (b)(2)(i) of this section. The certificate holder who elects to exercise this option must ensure the ''no-notice'' line checks are administered so the flight crewmembers are not notified before the evaluation. In addition, the AQP certificate holder must ensure that each pilot in command receives at least one ''no-notice'' line check every 24 months. As a minimum, the number of ''no-notice'' line checks administered each calendar year must equal at least 50% of the certificate holder's pilot-in-command workforce in accordance with a strategy approved by the FAA for that purpose. In addition, the line checks to be conducted under this paragraph must be conducted over all geographic areas flown by the certificate holder in accordance with a sampling methodology approved by the FAA for that purpose.

(iii) During the line checks required under paragraph (b)(2)(i) and (ii) of this section, each person performing duties as a pilot in command, second in command, or flight engineer for that flight, must be individually evaluated to determine whether the person remains adequately trained and currently proficient with respect to the particular aircraft, crew position, and type of operation in which he or she serves; and the person has sufficient knowledge and skills to operate effectively as part of a crew. The evaluator must be a check airman, an APD, or an FAA inspector and must hold the certificates and ratings required of the pilot in command.

(c) *Recency of experience*. For pilots in command, seconds in command, flight engineers, aircraft dispatchers, instructors, evaluators, and flight attendants, approved recency of experience requirements appropriate to the duty position.

(d) *Duration of cycles and periods*. Initially, the continuing qualification cycle approved for an AQP must not exceed 24 calendar months in duration, and must include two or more evaluation periods of equal duration. After that, upon demonstration by a certificate holder that an extension is warranted, the FAA may approve an extension of the continuing qualification cycle to a maximum of 36 calendar months in duration.

(e) *Requalification*. Each continuing qualification curriculum must include a curriculum segment that covers the requirements for requalifying a crewmember, aircraft dispatcher, other operations personnel, instructor, or evaluator who has not maintained continuing qualification.

§ 121.917 Other requirements.

In addition to the requirements of §§ 121.913 and 121.915, each AQP qualification and continuing qualification curriculum must include the following requirements:

(a) Integrated Crew Resource Management (CRM) or Dispatcher Resource Management (DRM) ground and if appropriate flight training applicable to each position for which training is provided under an AQP.

(b) Approved training on and evaluation of skills and proficiency of each person being trained under AQP to use his or her resource management skills and his or her technical (piloting or other) skills in an actual or simulated operations scenario. For flight crewmembers this training and evaluation must be conducted in an approved flight training device, flight simulator, or, if approved under this subpart, in an aircraft.

(c) Data collection and analysis processes acceptable to the FAA that will ensure the certificate holder provides performance information on its crewmembers, dispatchers, instructors, evaluators, and other operations personnel that will enable the certificate holder and the FAA to determine whether the form and content of training and evaluation activities are satisfactorily accomplishing the overall objectives of the curriculum.

§ 121.919 Certification.

A person subject to an AQP is eligible to receive a commercial or airline transport pilot, flight engineer, or aircraft dispatcher certificate or appropriate rating based on the successful completion of training and evaluation events accomplished under that program if the following requirements are met:

(a) Training and evaluation of required knowledge and skills under the AQP must meet minimum certification and rating criteria established by the FAA in parts 61, 63, or 65 of this chapter. The FAA may approve alternatives to the certification and rating criteria of parts 61, 63, or 65 of this chapter, including practical test requirements, if it can be demonstrated that the newly established criteria or requirements represent an equivalent or better measure of crewmember or dispatcher competence, operational proficiency, and safety.

(b) The applicant satisfactorily completes the appropriate qualification curriculum.

(c) The applicant shows competence in required technical knowledge and skills (*e.g.*, piloting or other) and crew resource management (*e.g.*, CRM or DRM) knowledge and skills in scenarios (*i.e.*, LOE) that test both types of knowledge and skills together.

(d) The applicant is otherwise eligible under the applicable requirements of part 61, 63, or 65 of this chapter.

(e) The applicant has been trained to proficiency on the certificate holder's approved AQP Qualification Standards as witnessed by an instructor, check airman, or APD and has passed an LOE administered by an APD or the FAA.

§ 121.921 Training devices and simulators.

(a) Each flight training device or airplane simulator that will be used in an AQP for one of the following purposes must be evaluated by the FAA for assignment of a flight training device or flight simulator qualification level:

(1) Required evaluation of individual or crew proficiency.

(2) Training to proficiency or training activities that determine if an individual or crew is ready for an evaluation of proficiency.

(3) Activities used to meet recency of experience requirements.

(4) Line Operational Simulations (LOS).

(b) Approval of other training equipment.

(1) Any training equipment that is intended to be used in an AQP for purposes other than those set forth in paragraph (a) of this section must be approved by the FAA for its intended use.

(2) An applicant for approval of training equipment under this paragraph must identify the device by its nomenclature and describe its intended use.

(3) Each training device approved for use in an AQP must be part of a continuing program to provide for its serviceability and fitness to perform its intended function as approved by the FAA.

§ 121.923 Approval of training, qualification, or evaluation by a person who provides training by arrangement.

(a) A certificate holder operating under part 121 or part 135 of this chapter may arrange to have AQP training, qualification, evaluation, or certification functions performed by another person (a ''training provider'') if the following requirements are met:

(1) The training provider is certificated under part 119 or 142 of this chapter.

(2) The training provider's AQP training and qualification curriculums,

curriculum segments, or portions of curriculum segments must be provisionally approved by the FAA. A training provider may apply for provisional approval independently or in conjunction with a certificate holder's application for AQP approval. Application for provisional approval must be made, through the FAA office directly responsible for oversight of the training provider, to the Manager of the Advanced Qualification Program.

(3) The specific use of provisionally approved curriculums, curriculum segments, or portions of curriculum segments in a certificate holder's AQP must be approved by the FAA as set forth in § 121.909.

(b) An applicant for provisional approval of a curriculum, curriculum segment, or portion of a curriculum segment under this paragraph must show the following requirements are met:

(1) The applicant must have a curriculum for the qualification and continuing qualification of each instructor and evaluator used by the applicant.

(2) The applicant's facilities must be found by the FAA to be adequate for any planned training, qualification, or evaluation for a certificate holder operating under part 121 or part 135 of this chapter.

(3) Except for indoctrination curriculums, the curriculum, curriculum segment, or portion of a curriculum segment must identify the specific make, model, and series aircraft (or variant) and crewmember or other positions for which it is designed.

(c) A certificate holder who wants approval to use a training provider's provisionally approved curriculum, curriculum segment, or portion of a curriculum segment in its AQP, must show the following requirements are met:

(1) Each instructor or evaluator used by the training provider must meet all the qualification and continuing qualification requirements that apply to employees of the certificate holder that has arranged for the training, including knowledge of the certificate holder's operations.

(2) Each provisionally approved curriculum, curriculum segment, or portion of a curriculum segment must be approved by the FAA for use in the certificate holder's AQP. The FAA will either provide approval or require modifications to ensure that each curriculum, curriculum segment, or portion of a curriculum segment is applicable to the certificate holder's AQP.

§ 121.925 Recordkeeping requirements.

Each certificate holder conducting an approved AQP must establish and maintain records in sufficient detail to demonstrate the certificate holder is in compliance with all the requirements of the AQP and this subpart.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ABOARD SUCH AIRCRAFT

■ 13. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

SFAR No. 58 [Removed]

■ 14. Remove SFAR No. 58 from part 135.

§ 135.1 [Amended]

■ 15. Amend § 135.1(a)(4) by removing ''SFAR No. 58'' and adding ''subpart Y of part 121 of this chapter'' in its place each place it appears.

Issued in Washington, DC on September 7, 2005.

Marion C. Blakey,

Administrator.

[FR Doc. 05–18342 Filed 9–15–05; 8:45 am]

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Federal Register

Friday,
September 16, 2005

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 3

False and Misleading Statements Regarding Aircraft Products, Parts, Appliances and Materials; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 3

[Docket No.: FAA–2003–15062; Amendment No. 3–1]

RIN 2120–AG08

False and Misleading Statements Regarding Aircraft Products, Parts, Appliances and Materials

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends FAA regulations to create additional rules banning certain false or misleading statements about type-certificated products, and products, parts, appliances and materials that may be used on type-certificated products. This action is necessary to help prevent people from representing that these items are suitable for use on type-certificated products when in fact they may not be. These rules are intended to provide assurance that aircraft owners and operators, and persons who maintain aircraft, have factual information on which to determine whether a product, part, appliance or material may be used in a given type-certificated product application.

DATES: This amendment becomes effective October 17, 2005.

FOR FURTHER INFORMATION CONTACT: Beverly Sharkey, Suspected Unapproved Parts Program Office (AVR–20), Federal Aviation Administration, 13873 Park Center Road, Herndon, Virginia 20171–3223; telephone (703) 668–3720, facsimile (703) 481–3002, e-mail *beverly.j.sharkey@faa.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy of this final rule using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/regulations_policies/*; or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by putting in a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual filing the comment (or signing the comment, if filed for an association, business, labor union). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question about this document, you may contact your local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*, or by e-mailing us at *9-AWA-SBREFA@faa.gov*.

I. Background

This final rule responds to a growing concern about how the aviation community represents products, parts, appliances and materials used on aircraft. This rule bans false or intentionally misleading statements about the airworthiness of type-certificated products and the acceptability of products, parts, appliances and materials for use on type-certificated products.

Under FAA regulations, the person installing a product, part or appliance on an aircraft is responsible for determining its airworthiness. Because these individuals cannot determine airworthiness simply by inspecting the item, they often rely on the information provided by whoever sold it to them to support their airworthiness decisions. This process ordinarily works well because most products, parts and appliances are of the quality and condition described in their records. However, there have been cases in which false or misleading statements have led a person installing a product, part or appliance to believe that it was suitable for a particular use when, in fact, it was not. This creates a safety risk.

A similar process applies to the use of materials. When materials are purchased, the buyer usually receives a certificate of conformance or similar document that shows what industry standard the material was produced to. In addition, these materials must meet the original engineering design data and quality requirements. Therefore, the records accompanying materials are critical for the buyer to determine whether the materials are fit for installation on or for fabrication of a product, part or appliance.

Currently, our regulations do not directly address false or intentionally misleading statements about products, parts, appliances and materials. In addition, it is difficult for the FAA to look into many seemingly false or misleading statements because the FAA does not regulate the distributors of products, parts, appliances and materials.

A. Summary of the NPRM

On May 5, 2003, the FAA published a notice of proposed rulemaking (NPRM) entitled ''False and Misleading Statements Regarding Aircraft Products, Parts and Materials'' (68 FR 23808; May 5, 2003). Of particular concern to the FAA was representations made by the distributors of products, parts, and materials marketed to the aircraft industry. Such distributors may not be subject to existing restrictions, because they may not possess a certificate or otherwise be situated in a manner that would permit the FAA to pursue enforcement action against them.

Records and representations related to the marketing of products, parts, and materials that are limited to certain experimental or military aircraft were not addressed by the NPRM. The FAA recognized that these types of aircraft do not necessarily require airworthiness certificates and that, to the extent such a certificate is not needed, the proposed rule could have a dampening effect on the development and continued operation of such aircraft.

In the NPRM, the FAA proposed additional rules that it argued would help prevent misleading statements by extending existing prohibitions on intentionally false or fraudulent statements currently addressed by 14 CFR 21.2, *Falsification of applications, reports, and records,* and 14 CFR 43.12, *Maintenance records: Falsification, reproduction, or alteration*, and by 18 U.S.C. 38 and 18 U.S.C. 1001.[1] The

[1] 49 U.S.C. 44726, also debars from FAA certification individuals convicted of engaging in fraudulent dealings. The statute also requires that current certificate holders who have been so convicted have their certificates revoked. The statute also permits the FAA to revoke a certificate absent a conviction if the agency determines that

NPRM also discussed the FAA's broad enforcement authority under 49 U.S.C. 40113.

The NPRM specifically proposed to prohibit false or misleading statements representing the airworthiness of a product for which the FAA has issued a type certificate, or the acceptability of any part or material for use on any product for which a type certificate has been issued. The FAA has been particularly concerned about misleading statements, *i.e.*, those that are not necessarily false, but which contain a material misrepresentation or omission that is likely to mislead a consumer acting reasonably under the circumstances. Such statements currently are not prohibited under the existing prohibitions discussed briefly above.

The scope of the proposed new prohibition would apply to any record transmitted to a potential consumer that made a representation as to the airworthiness or acceptability of a part or material on a type-certificated product. Such records most notably included advertisements in the printed or electronic media, but also included those records regularly relied upon by installers of equipment to ensure the continued airworthiness of an aircraft.

The NPRM also proposed a requirement that if a person were to express or imply that a product, part, or material met FAA airworthiness standards, it must ensure that the statement was true or else affirmatively state that the product, part, or material was not produced under an FAA production approval.

Finally, the NPRM proposed regulatory language that would permit the FAA to inspect aircraft and aircraft products, parts, or materials to determine compliance with the proposed prohibitions.

B. Summary of Comments

The FAA received twenty-one comments in response to the proposed rule. One comment was from a foreign regulatory body (Transport Canada), one from a commercial carrier (Delta Airlines), and five from private citizens in their own capacity. Additionally, eight comments were submitted by aircraft or aircraft parts manufacturers or distributors (Midcoast Aviation, Cougar Helicopters, Boeing, Skybolt Aeromotive Corp. (Skybolt), General Electric Aircraft Engines (GEAE), Cessna, Airbus, and United Technologies Corp. (UTC)), with the remaining six comments filed by various aviation-related trade associations (European Association of Aerospace Industries (AECMA), Regional Airline Association (RAA), Aerospace Industries Association (AIA), Aeronautical Repair Station Association (ARSA), Aviation Suppliers Association (ASA), and Aircraft Electronics Association (AEA)).

In general, the commenters expressed broad support for a prohibition against false statements regarding type-certificated products and parts and materials that may be used on type-certificated products. Fifteen of the commenters expressed general support for the efforts and objectives of the FAA in proposing the rule. Despite this support for the rule's objectives, most of these commenters also recommended specific changes to the final regulatory language. In particular, significant concern was raised about the aspect of the NPRM addressing statements that are misleading rather than factually false and enforcement action against statements made in advertisements. A more detailed discussion of the recommended changes is provided in the substantive discussion of today's rule.

Two commenters, Delta Airlines and RAA, did not express support for the proposal one way or the other, but offered specific comments on limited aspects of the proposal. Cessna merely commented that it had no comments or recommendations on the proposal.

Two of the remaining commenters, both private citizens, generally opposed the rulemaking, averring that they believe the FAA could use its resources better and the proposed rule is not needed because other rules adequately address the prohibition of false and misleading statements. The sentiment that there was no need for the proposed rule was echoed by ASA and AEA.

Midcoast Aviation commented that the Civil Aviation Regulations already had a part 3, the part proposed to house this final rule. The Civil Aviation Regulations were recodified in the early 1960s as FAA regulations and were renumbered under the numbering system used in the new regulations. Accordingly, there is no conflict in adopting a new part 3, and this comment will not be discussed further.

II. Discussion of the Final Rule

A. Summary of the Final Rule

Today's final rule extends the prohibition on fraudulent or intentionally false statements beyond those now covered by Title 14, Code of Federal Regulations (14 CFR) parts 21 and 43. In addition, it provides a regulation prohibiting intentionally misleading statements that, if violated, can be addressed by FAA enforcement action.

As discussed more fully below, the FAA has decided against requiring a disclaimer that a particular product was not produced under an FAA production approval if the individual marketing the product does not have specific records specifying that a production approval was given. The FAA recognizes that this provision was unnecessarily burdensome. Likewise, the general applicability section has been dropped because it was unnecessary. Finally, the FAA has decided against adopting an inspection requirement, because the agency already has general inspection authority.

B. Need for the Final Rule

The FAA is issuing this final rule because it has determined that the installation of products, parts, appliances and materials that are mistakenly believed to be airworthy or suitable for installation on type-certificated products creates an unacceptable risk to aviation safety. The FAA believes that part 3 will improve safety because it:

(1) Fills gaps in the legal and regulatory structure by extending the prohibition on fraudulent or intentionally false statements beyond those now covered by parts 21 and 43;

(2) Creates a new standard to determine what constitutes ''misleading;'' and

(3) Provides a means for the FAA to investigate possible violations of part 3.

Two commenters, ASA and AEA, stated that the NPRM proposed new duties that the FAA will have difficulty meeting. They contended that this rule imposes a duty on the FAA to go after commercial speech violations that may have little or nothing to do with safety issues. They also argued that regulation of commercial speech is not within the FAA's core mandate and is duplicative of the Federal Trade Commission's (FTC) role.[2]

the individual has committed acts that would lead to a conviction if pursued criminally. This statutory provision was not discussed in the NPRM.

[2] The commenters argued that the FAA lacked the legislative mandate to duplicate the functions of the FTC, citing the requirement in 49 U.S.C. 44726 that the FAA automatically revoke the certification of a certificate-holder convicted of fraud in a criminal proceeding without additional hearing and subject to a limited request by law enforcement personnel. The FAA does not believe this example indicates any intent on the part of Congress to constrain the FAA in the manner suggested by ASA and AEA. This statutory provision applies only to individuals who have already been convicted of fraud by a court of competent jurisdiction and mandates that the FAA take certain action as a result of this conviction. By the same token the statute requires

Continued

ASA and AEA suggested there are other administrative and law enforcement agencies, including the FTC, that address fraud adequately. ASA and AEA contended the FAA is ''ill-prepared'' to enforce rules that regulate commercial speech, as the FAA lacks the technical expertise to enforce commercial speech properly. They also pointed out the FAA has not shown that these agencies have failed to respond adequately to fraud and related issues in the aviation industry. Rather, they suggested that the creation of part 3 may divert the resources of these other agencies to non-aviation issues, potentially resulting in a diminution in aviation safety. ASA and AEA also stated there is no need for part 3 because 18 U.S.C. 38 already covers aircraft parts fraud.

Records containing false or intentionally misleading statements about the quality of aircraft products, parts, appliances and materials have a potentially large impact on the safety of the flying public. It is the FAA's responsibility to write and enforce rules, as needed, to ensure the aviation community upholds the highest levels of safety. The FAA has determined that existing laws and regulations only partially cover the problems addressed by this rule. Although the FTC and other administrative and law enforcement agencies have undoubtedly enforced their regulations against fraud, the FAA notes that part 3 is more comprehensive and believes it will be a greater deterrent against false and intentionally misleading statements affecting aviation.

The FAA acknowledges that 18 U.S.C. 38 covers aircraft parts fraud. However, part 3 goes further. It creates an administrative enforcement scheme similar to those in parts 21 and 43. The FAA believes this approach will better protect against a potential safety hazard because the FAA may seek to impose civil penalties rather than straining the limited resources of the Federal courts.

In the NPRM, the FAA discussed the possible compliance and enforcement action for violations of part 3. These actions range from counseling and corrective action, civil penalties, suspensions or revocation of an FAA certification, to criminal investigation. The action taken by the FAA will depend on all the circumstances of the violation. Each violation will be considered on a case-by-case basis and the FAA will decide at that time whether to pursue criminal prosecution.

It is important to note that the FAA cannot institute criminal charges. We refer a case to the Department of Transportation Office of the Inspector General or the appropriate law enforcement authorities when the circumstances warrant. The ultimate decision of whether to pursue criminal prosecution is solely up to the law enforcement authorities. The FAA uses criminal prosecution referrals as a means to enforce its regulations about suspected unapproved parts. Currently, 54 of the 236 open cases in this area (approximately 23%) are under review or investigation by law enforcement agencies. While not a direct correlation, we believe this shows how seriously we take violations in this area. The FAA intends to use criminal prosecution in much the same manner in enforcing the provisions of part 3.

The FAA has the expertise necessary to enforce this rule properly. The FAA modeled § 3.5(b) on false and fraudulent statements on similar rules elsewhere in the regulations (§§ 21.2, 43.12, 61.59, and 65.20). These rules have been in existence for some time and the FAA has had experience and success in enforcing these regulations. We are confident that we can apply the expertise we gained in enforcing these other regulations to effectively enforce § 3.5(b).

As to the enforcement of intentionally misleading statements, the FAA believes the FTC's regulatory approach to deceptive advertising provides an excellent model for § 3.5(c). Therefore, we will rely heavily on the precedents established by the FTC in resolving interpretative issues that may arise in enforcing this section. To ensure that the FAA's inspectors are fully versed in the FTC's regulatory approach to deceptive advertising, the FAA will develop guidance material and train its inspectors on the FTC's established criteria and precedents. By relying on the FTC's extensive background in this area, the FAA is confident that its personnel will be able to work efficiently and effectively with this new rule.

RAA and GEAE stated that part 3 will subject persons now covered by parts 21 and 43 to duplicative rulemaking. ARSA agreed, stating that §§ 21.2 and 43.12 already ban intentionally false and fraudulent statements by maintenance providers, design approval holders and production approval holders.

The FAA does not agree that part 3 creates duplicative rulemaking with parts 43 and 21. As for part 43, § 43.12 only bans fraudulent and intentionally false statements in records made to show compliance with part 43. There is no prohibition against misleading statements. The FAA recognizes the potential overlap between § 43.12 and § 3.5(b). This is why § 3.1 excludes records made under part 43 from the terms of § 3.5(b). As for part 21, § 21.2 bans fraudulent and intentional statements. However, § 21.2 limits this ban to applications for certificates or approvals under part 21, and on records that are kept, made, or used to show compliance with part 21. While § 21.2 does address some of the terms in § 3.5(b), it does not cover all records used by brokers, dealers, and other persons who are distributing and selling products, parts, appliances and materials, but who do not produce those items. Since § 21.2 only bans fraudulent and intentionally false statements, the prohibition against misleading statements in § 3.5(c) would not apply.

C. Applicability of the Final Rule

Today's rule is applicable to any person who makes a record that is conveyed to another person when there is an associated potential for compensation if the record relates to a type-certificated product or a product, part, appliance or material that may be used on a type-certificated product. It does not apply to those experimental aircraft or military aircraft that are not otherwise type certificated.

Originally, the FAA had proposed two applicability sections, one that generally related to persons ''engaged in aviation-related activities,'' and a second that applied to any records about type-certificated products or part and materials that may be used on certificated products. The intent behind two different applicability sections was to permit the addition of other general requirements into part 3 without amending the applicability section. Based on the comments to the NPRM, we have decided that the regulation would be clearer with a single applicability section. Accordingly, the final rule only adopts the narrower language proposed to address false and intentionally misleading statements.

We have, however, made several changes to that narrower applicability language. First, we have changed the section to reflect that the rule applies to persons who make certain records as opposed to the records themselves. Part 1 of the FAA regulations sets forth the general definitions that apply to Subchapters A through K of Chapter 1 of the FAA regulations. These definitions will apply to part 3. Under this section a ''[p]erson means an individual, firm, partnership,

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the Administrator to revoke a certificate if she determines that the certificate holder knowingly, and with the intent to defraud, engaged in conduct that rises to the level of a criminal act, even if no conviction results from that act.

corporation, company, association, joint-stock association, or governmental entity. It includes a trustee, receiver, assignee, or similar representative of any of them.'' In addition, the FAA intends to apply part 3 both to persons currently subject to FAA regulations and to those who are not currently directly regulated by the FAA. Second, we have added language to §§ 3.5(a) and 3.5(b) limiting the applicability of those sections to only those records conveyed to another person when there is a potential or actual sales transaction. This refinement has been added to address commenters' concerns that the rule could apply to in-house records with mistaken entries or related to internal investigations of parts, as well as records drafted in response to an FAA inquiry regarding new designs. The intention behind part 3 is not to penalize honest mistakes or to stifle internal investigations. It is to stop the practice of providing consumers with false or intentionally misleading statements that indicates a product, part, appliance or material is suitable for installation on a type-certificated aircraft when, in fact, it is not. We believe this refinement meets that need without unnecessarily restricting the communications of those persons engaged in the aviation business.

AEA, ASA, AECMA and Airbus had all suggested alternative language that would have limited part 3 to those records that could be reasonably relied upon by a person making a determination that could affect the airworthiness of the aircraft or other conformity to type design or the safety of flight. We decided against this approach because we believe it would prove overly restrictive. As discussed in greater detail below, we remain concerned that some individuals may rely on information conveyed in an advertisement to their detriment. We do not believe it would ever be reasonable for an installer to rely on an advertisement as evidence of airworthiness or suitability for installation on a type-certificated product. However, the individual purchasing a particular product may not be the installer of the product. Persons selling aviation products should not be allowed to prey upon the inexperience of these uninformed consumers.

GEAE commented that the rule should not apply only to type-certificated aircraft. GEAE suggested the rule apply to any aircraft, no matter what category or class, civil or public. In addition, GEAE expressed uncertainty about the rules applicability to amateur-built aircraft since amateur-built aircraft have both a type and airworthiness certificate. GEAE also noted there is no such type or class of aircraft as ''military aircraft.'' There are only civil aircraft and public aircraft. GEAE wanted the final rule to use the correct terminology.

Part 3 does not apply to any aircraft for which the FAA has issued an experimental airworthiness certificate, unless the FAA had previously issued a different airworthiness certificate for that aircraft. In addition, amateur-built aircraft do not have type certificates, only experimental airworthiness certificates. The NPRM contained a detailed discussion about the rationale for excluding experimental aircraft from this rule.

We recognize that military aircraft are public aircraft. However, unlike aircraft developed specifically for use by the military, other public aircraft are used much like civil aircraft. The distinction between the two lays not so much in their design and use characteristics as in their ownership status. We believe the aviation industry understands our distinction between military aircraft and other, type-certificated aircraft. Part 3 does not apply to products, parts, appliances and materials that are for military aircraft and are not represented to be acceptable for civil application. However, if records for a military product, part, appliance or material represent that they are acceptable for use in type-certificated products, part 3 would then apply.

Some former military aircraft have been put into civil use and are now operated on a special or standard airworthiness certificate. Some unique products, parts, appliances and materials that otherwise are only manufactured for military designed aircraft may be needed to maintain these aircraft. Records about these products, parts, appliances and materials should not state or imply that they are acceptable for use in type-certificated products, other than the product for which acceptability has been determined.

D. Lack of Specificity of Regulatory Terms

1. Record

The rule defines the term ''record'' broadly. We did this to include any means that communicates the airworthiness of a type-certificated product, or the acceptability of a product, part, appliance or material for use on type-certificated products. The FAA believes that a broad definition is the best means to ensure that aircraft owners, operators, producers, mechanics, and repairmen are relying on accurate information when making a determination about airworthiness.

In fact, after further review, the FAA believes the definition proposed in the NPRM is not broad enough. The technologies used to convey information are constantly changing and the proposed language is presented as a list. Therefore, any item not on this list would not be a ''record'' under part 3. Finally, the proposed definition of ''record'' is confusing because it presents two separate definitions.

Based on the comments received and the FAA's further review of part 3, we changed the final rule to include a definition of the word ''record'' to capture all existing and future means of communications. The definition now reads as follows:

> ''Record means any writing, drawing, map, recording, tape, film, photograph or other documentary material by which information is preserved or conveyed in any format, including, but not limited to, paper, microfilm, identification plates, stamped marks, bar codes or electronic format, and can either be separate from, attached to or inscribed on any product, part, appliance or material.''

AIA believes the broad definition of a ''record'' may reduce the quality of technical support provided to customers in the field. AIA believes that technical support personnel may limit their help and opinions for fear the FAA may cite them for violating § 3.5.

In analyzing the commenter's position, the FAA cannot understand how the prohibition against fraudulent or intentionally false statements might ''reduce the quality of technical support provided to customers in the field.'' No one should encourage technical support personnel to make fraudulent or intentionally false statements. This rule only codifies what should be a common and accepted practice within the technical support field.

As for intentionally misleading statements, the FAA understands that this definition could constrain technical support personnel from offering pure opinions about the airworthiness or acceptability of products, parts, appliances and materials. However, this is not necessarily a negative result. Technical support personnel should not make claims about their products, parts, appliances and materials unless appropriate records support these claims. These individuals should only state known facts about their products, parts, appliances and materials. These individuals should avoid unsupported opinions to eliminate the potential for the improper use of their products, parts, appliances and materials.

2. Airworthy

ASA and AEA noted that the rule contains no clear description of what ''airworthy'' means. According to these commenters, this lack of specificity rendered the proposed regulation unconstitutionally broad. We are adopting a definition of airworthy that is consistent with the FAA's existing position and with the criteria established by the NTSB, namely that an aircraft is unairworthy if ''the airframe [is] not in its original certificated or properly altered condition.'' Under the definition adopted today, an aircraft must conform to its type design and be in a condition for safe operation in order to be airworthy.

3. Acceptable for Installation

ASA and AEA assert there is even less certainty about the meaning of ''acceptable for installation.'' UTC echoed this concern.

There are various ways to prove that a product, part, appliance or material is ''acceptable.'' The most common is for it to be an approved product, part, appliance or material. Under part 1, the term ''approved'' means approved by the Administrator and, in this context, means a production approval holder (PAH) or a PAH approved supplier produced the product, part, appliance or material.

Used products, parts and appliances must be maintained in accordance with FAA regulations to be acceptable. This arises from § 43.13, which requires the condition of the product, part or appliance used in maintenance is at least equal to its original or properly altered condition. In many instances, it will be quite easy for a regulated party to demonstrate that a product, part or appliance is suitable for installation. This is because many of these items are already required to be marked. For those items for which no FAA marking is available, a regulated party could still argue that the item is acceptable for installation and provide whatever documentation it has to support its argument.

4. Material

AIA, Transport Canada and UTC requested the FAA add a definition of the word ''material'' to the rule. GEAE likewise requested clarification that the term did not refer to specific metallurgical properties. The aviation industry normally uses the word ''material'' to refer to the substances of which something is made or composed. This includes such things as sheet metal, unformed wood and bolts of fabric. For purposes of part 3, the FAA intends for the word ''material'' to be used in a manner consistent with the FAA's enabling statute, the FAA regulations, and with common industry practice.

5. Parts

Transport Canada and UTC also requested the FAA include a definition of the word ''parts.'' Transport Canada recommended we use the same definition that is in § 21.1(b). As we explained in the NPRM, there are various words and phrases used to describe ''parts'' throughout the FAA's enabling statute and regulations. Some of these words and phrases include appliance, equipment, apparatus, component, accessory, assembly, airframe, and appurtenance. The aviation industry often uses the term ''part'' broadly to refer to anything that is, or could be, used as a piece of an aircraft, aircraft engine, or propeller, including appliances and component parts. However, the FAA recognizes that the word ''part'' is also listed as a subpart of the term ''appliance'' in § 1.1. This section sets forth the general definitions that are used in Subchapters A through K of Chapter I of the FAA's regulations. Based on this, someone could make the argument that part 3 does not apply to an ''appliance'' or any of the other items listed in the definition of the word ''appliance.'' Therefore, we changed § 3.1 to reflect that part 3 also applies to appliances.

E. Application of the Final Rule on Advertisements

We have decided to retain the proposed prohibition against false or intentionally misleading statements in advertisements. The application of today's rule to such commercial speech was the subject of considerable comment on the NPRM.

While Boeing and the AIA did not question the general authority of the FAA to impose and enforce this rule, they questioned the jurisdiction of the FAA over advertisements. Boeing stated its belief that advertisements are not within the FAA's jurisdiction. Since advertisements have never been recognized as legitimate evidence of airworthiness, Boeing believes that the FTC and the marketplace should continue to regulate advertisements.

UTC raised a concern about defining a ''record'' to include advertisements. UTC averred that this will lead to many subjective judgments when applying the terms of part 3 to advertisements. Boeing, AIA, and one individual commenter argued that FAA should exclude advertisements from the definition of a ''record'' because advertisements are invalid documents for showing airworthiness.

Under 49 U.S.C. 44701, the Administrator has the authority to prescribe those regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This legislative authority and the meaning of air commerce are broad enough to give the FAA the power to issue rules that affect commercial speech, including advertisements, if that speech threatens to have an adverse impact on aviation safety.

We agree that aircraft parts installers should not rely on advertisements in determining whether a particular product is airworthy or appropriate for installation on type-certificated aircraft. However, we are also aware of instances where products have been purchased because of false or misleading advertisements and have subsequently been installed on aircraft. The risk of improper installation is particularly high when the product is shipped without the appropriate documentation or with no information as to suitability other than a series of numbers, the accuracy or presence of which could be easily overlooked.

The FAA's approach to aviation safety must, of necessity, be multi-faceted. While it is possible that the inappropriate part may be discovered during an inspection of a particular aircraft, it is also quite likely that it will not. Even if discovered, the aircraft may have been in operation with the inappropriate part for some time. If the FAA can prevent the sale of inappropriate products though enforcement action against false or intentionally misleading advertisements, then it logically will reduce the likelihood that the product will ever be installed on a type-certificated aircraft.

Additionally, as discussed above, the purchasers of these products may be insufficiently informed to understand that certain representations made in advertisements may be misleading. Thus, they may purchase a product, not knowing what additional documentation is needed to ensure the product is appropriate for use on their aircraft. While an installer may refuse to install a product because it is not accompanied by the appropriate documentation, thus diminishing the safety risk, the aircraft would remain out of service until an appropriate product was procured.

The standards for reviewing a potential violation of part 3 in an advertisement will be the same as the

standard applied to a review of any other ''record.'' As stated above, the FAA believes the FTC's regulatory approach to deceptive advertising is an excellent model for this proposal. Therefore, we will rely heavily on the precedents established by the FTC in resolving interpretative issues that may arise when applying this rule. To ensure that FAA inspectors are fully versed in the FTC's regulatory approach to deceptive advertising, the FAA will develop guidance material and train its inspectors on the FTC's established criteria and precedents. By relying on the well-established foundation provided by the FTC, the FAA is confident that its personnel will be able to apply the standards of this rule uniformly.

F. Prohibition on False and Fraudulent Statements

Other than arguing that there was no need for additional regulations governing false and fraudulent statements and the applicability of any prohibition to advertisements, the commenters generally supported the FAA's proposal to prohibit such statements. We have already addressed both of these objections, and have decided to adopt the prohibition as proposed.

One individual commenter did suggest that any fraudulent statement is intentionally false by definition, and recommended the FAA drop ''fraudulent'' from the regulatory language. We have decided against this recommendation because retaining the term provides us with greater flexibility in pursuing enforcement actions.

As we explained in greater detail in the NPRM, an intentionally false statement consists of (1) a false representation, (2) in reference to a material fact, (3) made with knowledge of its falsity. A fraudulent statement consists of these three elements, plus (4) it was made with the intent to deceive, and (5) action was taken in reliance upon the representation. For purposes of part 3, the FAA considers ''intentionally false'' and ''fraudulent'' statements to be two separate categories.

UTC wanted the standard the FAA uses to determine ''fraud'' to stress a knowing and willful intent to deceive or trick. As discussed above, for a statement to be fraudulent under § 3.5(b)(2), it must meet five criteria, one of which is the intent to deceive. The FAA agrees with the commenter that intent to deceive is a critical element of fraud. However, the FAA will not stress this over any of the other four requirements. All five must be present for the FAA to find that a fraudulent statement has been made.

G. Prohibition on Intentionally Misleading Statements

The FAA believes statements that meet the rule's criteria for being ''misleading'' under this rule are just as likely to adversely impact aviation safety as false statements. Based on this conclusion, the FAA has decided to adopt the prohibition against misleading statements with certain changes. First, we have adopted a scienter requirement. Second, we have omitted the requirement that airworthiness or suitability for installation be demonstrated through the presentation of acceptable records. Third, we have replaced the specification that a statement be express or implied by simply prohibiting a material representation or omission, either of which could mislead through an express or implied statement. Finally, we have added the legal requirement for demonstrating a misleading statement to the regulatory text. As drafted, the proposed text did not directly link the regulated party's action to a misleading statement.

ASA and AEA stated that the reliance on records in these sections is problematic, because the FAA has published no clear standard about what records are sufficient. They added that the FAA compounds this problem by not having any general requirements for parts documentation, and by not publishing standards for what is acceptable or not acceptable among commercial documents. In addition, ASA and AEA pointed out there is no FAA regulation or uniform industry standard for what must be included in commercial documentation about parts. The commenters argued that this lack of specific guidance renders the prohibition against misleading statements overbroad.

Several commenters raised issues about the term ''misleading.'' Boeing averred that ''misleading'' is vague for regulatory enforcement. In a similar vein, GEAE and UTC posited that the FAA could use the proposed rule against people who make ''honest'' or ''legitimate'' mistakes. AIA recommended this section only apply when a person intentionally or knowingly misleads. UTC agreed with AIA, while requesting the additional requirement of willfulness. UTC would further restrict this standard to records relating to FAA approval status.

ARSA stated that evaluating whether a statement is misleading injects a far greater degree of subjectivity into the determination, resulting in an ambiguous and poorly defined standard. Therefore, ARSA recommended withdrawing this section and limiting part 3 to only a prohibition of conduct that is intentionally false or fraudulent.

ASA and the AEA objected to the proposed language stating that the misleading statement could be the result of an express representation or could be through implication. They argued that no objective standard exists for industry to know when a communication is considered to ''imply'' a fact.

In the NPRM, we discussed how we consulted with the FTC in developing § 3.5(c). We also set forth the rationale underlying the standard the FAA will use to determine if a record is ''misleading.'' For purposes of this rule, a misleading statement requires:

(1) A material representation or omission;

(2) That is likely to mislead the consumer; and

(3) The consumer is acting reasonably under the circumstances.

The FAA does not believe that this standard is vague, ambiguous or poorly defined for enforcement purposes. The FTC has successfully enforced its misleading statement terms [3] for years using this same standard. While it is true that there is no established aviation-specific caselaw on the prohibition against misleading statements, the existing FTC caselaw provides ample fact-scenarios that are comparable to what one would see in the aviation community. Equally important, enforcement actions are undertaken by attorneys capable of applying the legal standard.

We believe much of the concern over the proposed standard arose from our assessment that the proposed prohibition lacked a scienter requirement. While an intentionally false statement requires knowledge of its falsity, we posited that a misleading statement does not require knowledge that it is misleading. In addition, under the proposal, there was no requirement that there be an intent to deceive when making misleading statements.

The FAA is concerned whether a representation is likely to mislead rather

[3] The term ''false advertisement'' is defined at 15 U.S.C. 55(a)(1) as ''an advertisement, other than labeling, which is misleading in a material respect, and in determining whether any advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the commodity to which the advertisement relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual.''

than whether it causes actual deception. Accordingly, we argued in the NPRM that there was no need to show actual intent in taking an enforcement action. We have reevaluated our position. We believe the burden of showing that a person intentionally made a statement knowing it could be misleading to a reasonable person is one that should be borne by the enforcement agency. The ultimate assessment of whether the requisite intent exists lies with the finder of fact. While this change in position adds significantly to the FAA's enforcement burden, our previous position arguably amounted to a strict liability standard in which ambiguous statements automatically exposed one to an enforcement action.

Thus, the FAA will consider all factors before deciding what enforcement action is necessary. Generally, we would first contact the person and discuss why the statement in question appears to be misleading. If the person who made the record in question can show a mistake was made, and such mistake was honest or legitimate, the FAA will not take enforcement action. However, if the statement is not corrected so as to remove its misleading character, or the mistake is one in a series of such mistakes, the FAA will presume knowledge on the part of the person sufficient to take enforcement action.

We have also removed the proposed requirement that an individual demonstrate to the FAA the airworthiness or suitability for installation on a type-certificated product through records. We recognize that there may be other ways to demonstrate airworthiness or suitability and that there is no clear standard regarding what types of records are acceptable. The basis for showing airworthiness or suitability for installation is one of the factors that would be considered by the finder of fact in making a determination that a statement is misleading.

The word ''imply'' and its variations are used in law to contrast the term ''express.'' An implication occurs where the intent of the communication about the subject matter is not expressed by clear and direct words. Instead, the intent of the communication is determined by implication or necessary deduction from the circumstances, the general language or the conduct of the parties.

However, we believe it is clearer to refer to the actual representation that is made rather than arguing over whether such representation was express or implied. In most cases, the aspect of the representation that is misleading will be implicit rather than explicit. Explicit statements may be more likely to be outright false rather than misleading. Accordingly, we have changed the language of § 3.5(c) to prohibit a person from representing that a product is airworthy or suitable for installation on a type-certificated product unless that person can demonstrate airworthiness or suitability of the particular product in question.

H. Statements Regarding FAA Airworthiness Standards

The FAA has decided against adopting the proposed restrictions on statements that a product, part or material meets FAA airworthiness standards. We had proposed that such statements must be supported by the appropriate documentation. In the absence of such documentation, the person holding out the product would be required to state that the product was not produced under an FAA production approval or, if a standard part, the part conformed to established industry or United States specifications.

The FAA received numerous objections to this proposed requirement. Two major areas of concern were owner-operator produced parts and foreign-manufactured products regulated by the FAA via bilateral agreements. Since neither of these categories of products are ''FAA approved,'' commenters, including Delta Airlines, ARSA, Airbus, AECMA, and Transport Canada, noted that a declaration that there was no approval would be both misleading and detrimental to the sale of these parts.

ASA and AEA argued that the proposed requirement created vague standards and required reliance on historical information concerning production approval that is not uniformly maintained and which is not otherwise legally required. In addition, they stated that the proposed requirement relied on airworthiness as a standard for demonstration when the term airworthy remains undefined in the regulations.

Transport Canada noted that the statement that a part is not produced under a production approval provides no indication of the consequences of that statement. Transport Canada wanted the FAA to identify the consequences and require that the consequences are part of the statement required under the proposed requirement.

Based on these comments, the FAA has decided not to adopt the proposed requirement. Part of the problem is that the proposed regulatory language did not cover all the means by which a product, part, appliance or material can meet FAA airworthiness standards.

The FAA has tried to redraft this section's language and has considered many options. However, none of these fix the problem. The goal of part 3 is to prevent certain false and misleading statements. The removal of this proposed requirement does not affect the ability of part 3 to achieve this goal effectively and efficiently. The proposed rule included the requirement to provide some guidance on what the FAA might look for when enforcing part 3. However, the FAA recognizes that this guidance was confusing, was not complete, and detracts from the other terms of part 3. Therefore, it has been removed from the final rule.

Several of the comments expressed the need for clarification about the applicability of part 3 to products, parts, appliances and materials imported to the U.S. under part 21, subpart N and to owner-operator produced products, parts, appliances and materials. The FAA wants to clarify that part 3 applies to all products, parts, appliances and materials imported to the U.S. under part 21, subpart N and all owner-operator produced products, parts, appliances and materials. While the FAA recognizes the difficulty in enforcing part 3 against foreign entities, the FAA believes that no product, part, appliance or material, regardless of its origin, should be excluded from the terms of part 3. By the same token, persons selling these products should be able to rely on the provenance created by bilateral agreements to defend themselves against any claims that they misrepresented that products were airworthy or suitable for installation on a type-certificated product.

I. FAA Authority To Investigate

ASA and AEA averred that the proposed inspection requirement, which stated that each person for whom the FAA could seek enforcement action for a misleading statement would have to make all records and product available for inspection violates the Fourth Amendment prohibition against unreasonable searches. They each argued that this prohibition precludes warrantless intrusions pursuant to civil or criminal investigations unless some recognized exception to the warrant process applies. Since the FAA has failed to identify an exception to the standard warrant process, ASA and AEA object to this section, arguing it allows unconstitutional searches.

We have decided against adopting the proposed investigatory language because we have determined that the FAA's existing authority to issue a

subpoena is sufficient to conduct investigations under this rule. Additionally, the FAA has determined the inclusion of the proposed language could be interpreted as an attempt by the FAA to extend its investigatory authority through regulation beyond any statutory constraints.

Under 49 U.S.C. 40113, the Administrator has authority to conduct investigations that she considers necessary to carry out her duties relating to air commerce and safety. Also, 49 U.S.C. 46101(a)(2) grants the Administrator authority to conduct an investigation about a person violating the air commerce and safety provisions of Title 49 if reasonable grounds appear for the investigation. These provisions give the FAA authority to conduct investigations against all persons, even non-certificate holders.

The purpose of this rule is to improve air safety by preventing people from representing that any product, part, appliance or material is suitable for use on any type-certificated product when, in fact, the product, part, appliance or material may not be. Therefore, under the above sections of the United States Code, the FAA has authority to conduct investigations when it becomes aware of possible violations of this rule.

The FAA is not asserting that it has the right to enter these businesses and inspect products, parts, appliances, materials and their records at will or by force. If a person fails to comply voluntarily with a request to produce records or a request to permit an inspection of a product, part, appliance or material, the FAA may get a subpoena to compel compliance.

UTC raised a concern that the proposed language would have allowed the FAA to copy any records, including valuable commercial documents. UTC is concerned that these documents would then be available to UTC's competition through a filing under the Freedom of Information Act (FOIA).

Exemption 4 of FOIA protects ''trade secrets and commercial or financial information from a person that is privileged or confidential.'' The intent of this exemption is to protect the interests of both the FAA and the owners of such information. To the extent a FOIA request is received for any information that may be proprietary in nature, the FAA routinely asks the affected business to review the FOIA request and assert any privilege that may apply under exemption 4. The process would be no different for these records.

J. FAA Resources To Investigate

ASA and AEA argued the FAA is ''ill-prepared'' to enforce regulations that regulate commercial speech because of a lack of resources. Both commenters contended this rule will create a significant resource allocation problem since the FAA does not have enough resources to perform its current tasks.

Another commenter, an individual, agreed with ASA and AEA. This commenter stated the FAA would use its resources better by conducting surveillance on installers and manufacturers.

The FAA has the resources necessary to enforce this rule properly. The FAA expects that most violations of part 3 will arise as a result of:

(1) Reports made to the FAA by parties who relied on a false or misleading statement in the purchase or installation of a product, part, appliance or material; or

(2) Findings resulting from an FAA inspection or investigation that FAA conducted for other purposes.

We already receive these kinds of complaints and make findings based on the results of our investigations. Therefore, the resources needed to look into these cases will not be significant. In addition, the FAA believes that, with time, the existence of part 3 will effectively deter most people from issuing records that violate part 3.

Finally, the FAA does not believe that FAA surveillance of installers and manufacturers for violations of part 3 would be a good use of its resources. Surveillance for violations would require significantly more resources than enforcing part 3. In addition, the commenter has not provided any data to indicate that this approach would be more effective in addressing the issues covered by part 3.

K. Miscellaneous Items

1. Inclusion of Fluids

The proposed rule did not cover records about fluids. As part of the NPRM, the FAA sought comments on whether there is a significant problem with false or misleading records about fluids used in aviation. In addition, the FAA sought comments about whether the final rule should apply these records.

In response to this request, the FAA received three comments and all supported including fluids in the final rule. GEAE noted there is not a significant problem with records on fluids. However, GEAE believed the final rule should cover these records to be proactive. Boeing and AIA each stated the final rule should cover fluids since improperly represented fluids could detrimentally affect the airworthiness of aircraft.

The FAA thanks those commenters that supplied comments about including fluids in the final rule. The FAA recognizes that false or misleading records about fluids could have a harmful affect on safety. Therefore, the FAA is considering the issues raised by these comments and the choices available to regulate these records. However, because of the complexities of these issues, the FAA does not want to delay issuing this final rule while the FAA analyzes these issues. Therefore, the final rule will not cover records about fluids.

2. Quality Escapes and Production Overruns

GEAE and AIA raised concerns about the impact of this rule on quality escapes. Boeing had a similar concern about production overruns. These commenters worried that the intent of this rule is to ''outlaw'' production overruns and to penalize those individuals associated with quality escapes.

For purposes of this rule, the FAA is not concerned with how a product, part, appliance or material was produced or entered the pool of available products, parts, appliances or materials. Other FAA regulations address the implications of and ramifications arising from quality escapes and production overruns. This rule only applies to what is in the records that go with such products, parts, appliances or materials. If any record is false or intentionally misleading, a violation of this rule will occur as long as the record is disseminated for the purpose of supporting or effecting a commercial sale of a covered product, part, appliance, or material. The history of the item in question is irrelevant.

3. Increased Costs Associated With Compliance

ASA and AEA contend the records requirement of § 3.5 will have a tremendous financial impact. ASA and AEA believe that many parts in current inventories do not have records. In these cases, an installer is able to make a determination about airworthiness based on the testable physical characteristics of the part. ASA and AEA believe that these ''record-less'' parts could not be sold according to part 3.

Part 3 does not create record requirements for selling products, parts, appliances and materials. These standards exist in other FAA regulations. This rule only sets forth

standards about the contents of the records for products, parts, appliances and materials. Therefore, part 3 does not govern the possible sale of ''record-less parts.'' However, once these products, parts, appliances and materials have records, these records must comply with part 3. We note that any concerns about ''record-less parts'' should be further eased by the removal of the requirement that indicia of airworthiness or suitability for installation in § 3.5(d) be demonstrated through records.

4. Illustrated Parts Catalogues (IPCs)

GEAE recommends the FAA define a ''record'' to exclude IPCs. Boeing agrees, stating that it is not correct to imply FAA oversight of IPC content within this regulation. AIA and UTC also want to exclude IPCs from the definition to allow IPCs to continue to service the full range of business needs of customers.

The FAA believes that IPCs should remain within the scope of the rule. While the FAA recognizes IPCs are not FAA approved, this should not be a reason to exclude these documents from this rule. IPCs are integral to ordering products, parts, appliances and materials. IPCs communicate to aircraft owners, operators, producers, mechanics, and repairmen the acceptability of a product, part, appliance or material for use on type-certificated products. While the FAA does not see why a manufacturer would put a false or intentionally misleading statement in an IPC, the FAA does not want to create a possible loophole for future abuse. Therefore, part 3 covers IPCs.[4]

5. Clarifying Changes to Regulatory Text

When reviewing the proposed rule language, the FAA found some minor technical errors which are corrected here.

(1) A ''product'' includes aircraft, engines and propellers. Since someone can install an engine or propeller on an aircraft, a ''product'' can technically be installed on a ''product''. Therefore, the FAA changed § 3.5(c) to insert the word ''product'' into the language covering the acceptability of products, parts and materials for installation on products.

(2) We changed the heading of § 3.5(a) from ''(P)rohibition preventing misleading statements'' to ''(P)rohibition against misleading statements.'' We did this to be consistent with the heading for § 3.5(b).

(3) Based on the change to § 3.1 adding the word ''appliance,'' we added the term ''appliance'' to § 3.5(c) where appropriate.

(4) The proposed language of § 3.5 covers statements about the acceptability of any product, part, appliance or material for ''use'' on products. Elsewhere in the regulation, the word ''installation'' is used. The FAA believes the word ''installation'' covers the intent of part 3. Therefore, §§ 3.5(b)(1) and 3.5(b)(2) are changed to delete the word ''use'' and replace it with ''installation.''

6. Effective Date

There are no compliance dates or reporting requirements in this rule. The rule will take effect 30 days from the date of publication in the **Federal Register**.

III. Regulatory Notices and Analyses

Statement of Statutory Authority

This rulemaking is promulgated under the authority described in Subtitle VII, part A, Section 40113, Administrative, Section 44701, General requirements, and Section 44704, Type certificates, production certificates, and airworthiness certificates. Under these sections, the FAA has been authorized to issue and enforce regulations governing the safety of aircraft products and the parts, appliances and material used on such products.

Paperwork Reduction Act

There are no current or new requirements for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency should propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule:

(1) Will generate benefits that justify its additional costs, yet is a ''significant regulatory action'' as defined in the Executive Order due to the potential public interest in the regulation;

(2) Is significant as defined in the Department of Transportation's Regulatory Policies and Procedures;

(3) Would not have a significant impact on a substantial number of small entities;

(4) Would not constitute a barrier to international trade; and

(5) Would not contain any Federal intergovernmental or private sector mandate.

These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the docket.

Total Costs and Benefits of This Rulemaking

The estimated quantifiable net cost of this rulemaking is $1.1 million ($0.8 million, discounted) over the next ten years. The benefits of this rulemaking are unquantifiable and cannot be estimated.

Who is Potentially Affected by This Rulemaking

This rulemaking affects anyone engaged in aviation-related activities, such as manufacturers, repair stations and mechanics, air carriers or other aircraft operators, including part distributors and part brokers.

Our Cost Assumptions and Sources of Information

(1) Discount rate—7%.

(2) Period of analysis—2004–2013.

(3) Monetary values expressed in 2003 dollars.

(4) Loaded wage rate of an FG–13 Step 5—$47.64.

Alternatives We Considered

No alternatives were considered in this rulemaking analysis.

Benefits of This Rulemaking

Lack of relevant data prevents the FAA from quantifying the benefit analysis. However, the unquantifiable benefit is enhanced safety to the aviation community and flying public by ensuring that aircraft owners, aircraft operators and persons who maintain

[4] Delta Airlines requests the rulemaking include a new requirement for IPCs. Delta asks the FAA to require manufacturers to list only FAA approved parts and suppliers in their IPCs. It is not the intent of this rule to create a standard for what must be in IPCs. However, part 3 applies to IPCs, and manufacturers should take proper steps to ensure that their IPCs do not violate the terms of part 3.

aircraft have factual information on which to determine whether a product, part, appliance or material may be used in a given civil aircraft.

Costs of This Rulemaking

The FAA will incur costs of $1.1 million ($0.8 million, discounted), and the entities affected by this rulemaking will not incur any costs.

Changes From the NPRM to the Final Rule

The FAA did not receive any comments that either questioned our analysis, or provided suggestions to consider altering our initial analysis. The only changes made in the analysis were that the loaded wage rate of a FG–13, step 5 employee was increased from $40.16 to $47.64.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes:

''* * * as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.''

To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule will establish rules related to false and intentionally misleading statements about products, parts, appliances and materials that may be used on type-certificated aircraft. For the entities affected by this final rule, the FAA expects the annualized compliance costs to be minimal. Therefore, these small entities should incur only minimal additional costs as a result of the final rule. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

The final rule will not affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 0104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This final rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the regulations clearly stated?
- Do the regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the final rule? Please send your comments to the address specified in the **ADDRESSES** section.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the FAA, when modifying its regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. In the NPRM, we requested comments on whether the proposed rule should apply differently to intrastate operations in Alaska. We didn't receive any comments, and we have determined, based on the administrative record of this rulemaking, that there is no need to make any regulatory distinctions applicable to intrastate aviation in Alaska.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312d and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because:

(1) It is not a ''significant regulatory action'' under Executive Order 12866; and

(2) It is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 3

Aircraft, Aviation safety, False, Fraud, Misleading.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

■ 1. Add part 3 to read as follows:

PART 3—GENERAL REQUIREMENTS

Sec.

Authority: 49 U.S.C. 106(g), 40113, 44701, and 44704.

§ 3.1 Applicability.

(a) This part applies to any person who makes a record regarding:

(1) A type-certificated product, or

(2) A product, part, appliance or material that may be used on a type-certificated product.

(b) Section 3.5(b) does not apply to records made under part 43 of this chapter.

§ 3.5 Statements about products, parts, appliances and materials.

(a) *Definitions.* The following terms will have the stated meanings when used in this section:

Airworthy means the aircraft conforms to its type design and is in a condition for safe operation.

Product means an aircraft, aircraft engine, or aircraft propeller.

Record means any writing, drawing, map, recording, tape, film, photograph or other documentary material by which information is preserved or conveyed in any format, including, but not limited to, paper, microfilm, identification plates, stamped marks, bar codes or electronic format, and can either be separate from, attached to or inscribed on any product, part, appliance or material.

(b) *Prohibition against fraudulent and intentionally false statements.* When conveying information related to an advertisement or sales transaction, no person may make or cause to be made:

(1) Any fraudulent or intentionally false statement in any record about the airworthiness of a type-certificated product, or the acceptability of any product, part, appliance, or material for installation on a type-certificated product.

(2) Any fraudulent or intentionally false reproduction or alteration of any record about the airworthiness of any type-certificated product, or the acceptability of any product, part, appliance, or material for installation on a type-certificated product.

(c) *Prohibition against intentionally misleading statements.*

(1) When conveying information related to an advertisement or sales transaction, no person may make, or cause to be made, a material representation that a type-certificated product is airworthy, or that a product, part, appliance, or material is acceptable for installation on a type-certificated product in any record if that representation is likely to mislead a consumer acting reasonably under the circumstances.

(2) When conveying information related to an advertisement or sales transaction, no person may make, or cause to be made, through the omission of material information, a representation that a type-certificated product is airworthy, or that a product, part, appliance, or material is acceptable for installation on a type-certificated product in any record if that representation is likely to mislead a consumer acting reasonably under the circumstances.

(d) The provisions of § 3.5(b) and § 3.5(c) shall not apply if a person can show that the product is airworthy or that the product, part, appliance or material is acceptable for installation on a type-certificated product.

Issued in Washington, DC, on September 9, 2005.

Marion C. Blakey,

Administrator.

[FR Doc. 05–18343 Filed 9–15–05; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

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H.R. 3650/P.L. 109–63

Federal Judiciary Emergency Special Sessions Act of 2005 (Sept. 9, 2005; 119 Stat. 1993)

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